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**Office For Equity Education's**
**Multicultural Education Resource Series**

# SEXUAL HARASSMENT IN THE SCHOOLS

## A Statewide Project for Secondary and Vocational Schools

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ABSTRACT

This report describes ways of eliminating sexual harassment from Washington State schools. It is divided into nine sections. Section I examines the relationship between sexual harassment and societal norms and myths which support sexual exploitation of women. Section II defines sexual harassment as any unwanted sexual attention on the job or in the school which makes a person uncomfortable, affects their ability to work, or interferes with educational or employment opportunities. Section III presents data from several empirical studies of the pervasiveness and frequency of sexual harassment. Section IV identifies victims of harassment, describes its common effects, and lists some of the settlement costs of some harassment court suits. Section V suggests informal steps that students can take to stop sexual harassment. Suggestions for employees are listed in Section VI. Section VII examines legal remedies for sexual harassment and provides information on how to file a discrimination charge. Legal definitions of sexual abuse and sexual harassment are compared. Section VIII explains how institutions, as well as individuals (schools, as well as administrators and teachers), may be held legally liable for incidents of sexual harassment in the schools. Finally, Section IX outlines strategies for preventing and eliminating sexual harassment in schools. Appendices include supplementary information on laws regarding sexual harassment and school responsibility, and on dealing with and documenting individual cases. (KH)

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# SEXUAL HARASSMENT IN THE SCHOOLS

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## SECTION 1

## SOCIETAL NORMS AND SEXUAL HARASSMENT

III

## SOCIETAL NORMS AND SEXUAL HARASSMENT

Sexual harassment is an age-old phenomenon that has only recently been given a name. Previously it was seen as an inevitable consequence of men and women working together. A victim may have received sympathy or blame, but sexual harassment was viewed as an isolated, interpersonal problem. Only recently has sexual harassment come to be identified as a widespread social problem. Changing perceptions of sexual harassment are rooted in changing assumptions about the inherent natures of men and women, including their intellectual and work capacities. Responding effectively to sexual harassment in schools and workplaces requires understanding the influence of these changing assumptions.

Within our society, it is not uncommon for individual victims of social forces to be blamed for their circumstances. People may be blamed for being the victims of poverty, discrimination or assault. Female victims of sexual assault are vulnerable to a particular form of this victim-blaming. Rape victims, for example, are often suspected of seducing their assailants. They must provide information on their form of dress, lifestyle, and sexual history to counter the prevalent attitude that they invited the act of violence against them. Victims of sexual harassment encounter these same attitudes and may be subjected to similar assessments of their behaviors. A pervasive atmosphere of victim-blaming results in significantly reduced reporting rates by victims of harassment or assault. Victims often blame themselves, and find that they receive little support from peers and managers.

The ambiguity of defining sexual harassment arises from at least three specific sources. The first source of ambiguity about sexual harassment emerges from the context of certain behaviors, not necessarily the behaviors themselves. Interactions that are appropriate in social situations are often inappropriate in school settings or in workplaces. The power differential between a supervisor and employee, or between a teacher and student is always present and cannot easily be separated from a particular interaction. In student-to-student harassment, power differentials are more subtle, but still present. For example, power can be derived from acceptance by certain friendship groups; inclusion in the group may require going along with uncomfortable behaviors from a popular classmate. Considering that maintaining one's reputation is also important, a student may respond to unwelcome attention with a mark of politeness or friendliness. These dynamics only compound the problem. While an initiator is likely to interpret conformity or politeness as encouragement, the victim is often confused and anxiously hopes the whole problem will go away. The absence of overt conflict may mean that adult observers would tend to view such situations as normal instances of adolescents learning to see themselves as sexual beings. These seemingly social behaviors have a profound impact on the educational and career choices of high school students. Such peer group pressure may be sufficient to dissuade someone from pursuing non-traditional careers.

The second source that contributes to the confusion over the definition of sexual harassment is that men and women grow up in many different cultures within our



Original source - "WHO'S HURT AND WHO'S LIABLE" pages 13-18

society. Recent surveys indicate that men and women disagree on what constitutes sexual harassment, and on its effects on individuals' self-esteem and productivity. For example, an incident of unwanted sexual touching initiated by a female to a male co-worker may be perceived quite differently from the same behavior initiated by a male to a female co-worker. Even though many objective conditions may be identical -- e.g., relationship to supervisor, length of time in employment, etc. -- the subjective meaning and impact of the unwanted touching often differed greatly. The male recipient of the behavior may perceive the interaction as flattery, even if it is unwanted. The female recipient is more likely to experience it as threatening to her job and her person, and to question whether she invited the behavior. Sexual harassment, in part, arises from and is perpetuated by such differing perceptions of the same interactions by men and women.

Changing sex role expectations for both males and females adds a third source of ambiguity about the definition of sexual harassment. For example, men are no longer the only initiators of relationships, and women are no longer expected to refuse sexual activity merely to protect their reputations. Until sex role stereotyping is eliminated, male and female interactions will be confused by the possibility of each of them acting in "new" or "old" sex role patterns.

Individuals responsible for mediating sexual harassment complaints in workplaces and schools repeatedly report misinterpretation, misunderstanding and absence of communication as pivotal elements in cases of chronic harassment. In a recent high school case, some young men wrote sexually abusive language on a young woman's test paper after it was returned by the teacher. These comments made her very upset and embarrassed. The student then reported the incident to a sensitive administrator who spoke with the male students. The young men admitted to having written the comments and the resolution was achieved through consciousness-raising rather than punishment. They simply had not considered the effects of their actions upon the young woman. Young men will often engage in activities that dehumanize or dismiss young women without contemplating any consequences except how it will enhance their status among other young men.

Understanding the commonly held ideas and values about what it means to be male and female is important if we are to correct the misinterpretation and lack of communication that contribute to sexual harassment. Following is a list of myths and realities that influence our thinking about the existence and dynamics of sexual harassment in employment and education.

SEXUAL HARASSMENT: MYTHS AND REALITIES

An elaborate series of myths supports all forms of violence against women. These myths, often based on false assumptions about men's and women's "natural" biological makeup, ensure that women who encounter violence against themselves feel guilty rather than violated. Women are therefore less likely to speak up or to take action to eliminate harassment. The following myths, reflecting current attitudes, serve in particular to perpetuate sexual harassment.



Original source - "WHO'S HURT AND WHO'S LIABLE" pages 13-18
Myths and Realities attributed to The Alliance Against Sexual Coercion 1979

1. MYTH: Sexual harassment is not a serious social problem and it affects only a few victims.

   REALITY: In a 1976 survey in Redbook Magazine, 88 percent of the 9,000 respondents reported that they had experienced one or more forms of unwanted sexual advances on the job. Women suffer from sexual harassment regardless of their appearance, age, race, marital status, occupation, or socio-economic class.

   That sexual harassment is a serious problem was documented by the National Merit Systems Protection Board in 1980. They did a random sample survey of women in all occupational categories, of all ages, educational backgrounds, races, salary and grade levels, in all geographical areas of the country. Women in all categories experienced sexual harassment. They found that 42% of the women surveyed had experienced sexual harassment in the last two years alone. This did not include harassment they had experienced earlier in their working lives and did not include women who had left their jobs due to sexual harassment. Men were also surveyed and 15% said they had been harassed, although fewer experienced the more severe forms of harassment. The National Merit Systems Protection Board estimated that the costs of sexual harassment for the two-year period were $189 million.

2. MYTH: If I haven't heard of complaints of sexual harassment, then it's not happening in my school or workplace.

   REALITY: Victims don't report sexual harassment because they feel isolated, guilty, scared of losing their jobs. We can begin to eliminate sexual harassment at the workplace only when we share and understand our experiences. If we remain silent, workplace harassment will continue to be seen as a personal problem rather than as a social issue. These two myths will operate until so many victims speak up about sexual harassment that our society can no longer pretend it doesn't happen.

3. MYTH: Victims invite sexual harassment by their behavior and/or dress.

   REALITY: As with rape, sexual harassment is not a sexually motivated act. It is an assertion of hostility and/or power expressed in a sexual manner. Sexual harassment is not the victim's fault in any way.

   Often women are expected to act or dress seductively both to get and keep their jobs.

4. MYTH: Only people in certain occupations are likely to be sexually harassed.

   REALITY: Waitpersons, flight attendants, and secretaries are not the only victims of sexual harassment. Employees who work in factories, at professional jobs - and all kinds of jobs - consistently



Original source - "WHO'S HURT AND WHO'S LIABLE" pages 13-18
Myths and Realities attributed to The Alliance Against Sexual Coercion 1979

report this problem. Students, clients of professionals (doctors, dentists, therapists, etc.), domestic workers, and babysitters also suffer sexual harassment and abuse.

5. MYTH: Harassees who object to a pinch or pat have no sense of humor.

   REALITY: Harassment is humiliating and degrading. It undermines a victim's school or work performance - and often threatens her/his education or economic livelihood. Victims of sexual harassment suffer emotionally and physically.

6. MYTH: Women who remain in a job where they are sexually harassed are masochistic.

   REALITY: Women's lower socio-economic position in the U.S. frequently means that many are unable to quit their jobs or find new employment.

7. MYTH: Only bosses are in a position to harass at the workplace.

   REALITY: Co-workers and clients can also be harassers in the workplace. Clients threaten to withdraw their business. Co-workers make work intolerable. Both complain to the boss - or already have the boss's support.



Original source - "WHO'S HURT AND WHO'S LIABLE" pages 13-18
Myths and Realities attributed to The Alliance Against Sexual Coercion 1979

## SECTION 2

## WHAT IS SEXUAL HARASSMENT?

## WHAT IS SEXUAL HARASSMENT?

Sexual harassment is any unwanted sexual attention on the job or in the school which makes a person uncomfortable, affects their ability to do the work, or interferes with educational or employment opportunities. Sexual harassment includes any unwanted sexual attention such as:

- Sexually suggestive looks or gestures.
- Sexual teasing or jokes.
- Pressure for dates.
- Sexually demeaning comments.
- Deliberate touching, cornering, pinching.
- Attempts to kiss or fondle.
- Pressure for sex.
- Requests for sex in exchange for grades, promotions, or salary increases or to avoid poor grades, demotions, lay offs or terminations.

The Equal Employment Opportunity Commission (EEOC) issued the final interpretive guidelines on sexual harassment on November 10, 1980, under Title VII of the Civil Rights Act of 1964. (See Appendix A )

The guidelines define sexual harassment in employment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a nature which constitute harassment when:

- submission to the conduct is either explicitly or implicitly a term or condition of an individual's employment;

- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; and/or

- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment in the educational environment is defined as any unwanted sexual attention from administrators, teachers, staff, or other persons a victim deals with in the school or school-related activities. The range of behaviors include: leering, pinching, grabbing, suggestive verbal comments, pressure for sexual activity or other actions interfering with school performance.

Title IX of the Education Amendments of 1972 prohibits sex discrimination in any educational program or activity that receives federal financial assistance. Almost all educational institutions receive federal assistance and are therefore covered by Title IX.

## SECTION 3

## STUDIES ON SEXUAL HARASSMENT IN EMPLOYMENT AND IN EDUCATION

## EMPLOYMENT STUDIES

Redbook (1976) - 9,000 clerical and professional women. 92% overt physical harassment, sexual remarks and leering; 50% they or someone they knew had to quit or been fired because of harassment; and 75% believed that if they complained to a supervisor, nothing would be done.

Working Women Institute, New York - 70% of those surveyed said they were harassed. 18% complained; 52% believed nothing would be done; 43% expected ridicule or matter to be treated lightly; 30% expected they would suffer repercussions; 66% lost jobs because of direct result of sexual harassment; 24% were fired for failing to go along or for complaining about it. 42% of the women were eventually forced to quit when the working environment became intolerable. In 75% of the cases where the victim ignored the harassment, it worsened or continued. One-fourth of the victims who ignored sexual advances were eventually punished.

An average of 59% of working women have personally experienced sexual harassment, 24 million of the 40 million women in the workforce.

City of Phoenix (Nelson, 1980) found that 15% of the 1,300 women employees reported having been approached for sexual favors. 59% of women surveyed had experienced one or more incidents of sexual harassment ranging from suggestive looks and sexual remarks to propositions and coercive sex.

Merit Systems Protection Board, U.S. Government, 1980. 19,500 male and female federal employees responded. MSPB (1981) reported that between May 1978 and May 1980, sexual harassment cost the government almost $18.9 million. The greatest costs were associated with the loss of individual and group productivity. 42% of the women said they had experienced sexual harassment; 15% of the men said they had experienced it; only 2% reported it because they thought reporting it would not help. In 1978-79, approximately 8,000 women left federal jobs because of sexual harassment.

United Nations, 1976. 875 men and women responded. 50% of the women experienced sexual harassment; 31% of the men experienced it or were aware it was happening to others.

Despite these statistics, women and men do not agree on the frequency with which sexual harassment occurs. For example, a national study of 2,000 executives conducted jointly by Redbook and Harvard Business Review found that, although men and women generally agreed on what constituted sexual harassment, they disagreed on its incidence of occurrence. The report indicated that upper-level management appeared isolated from occurrences of harassment and that middle-level management were somewhat less aware of misconduct than lower-level management.

In addition, although most executives indicated they favor having a company policy against harassment, few organizations appear to be addressing the problem.

## EDUCATION STUDIES

Harvard University 32% tenured female professors; 49% of those without tenure; 41% of women graduate students; and 34% of undergraduate students have encountered sexual harassment from a person in authority at least once while at the university. 15% graduate and 12% undergraduate students changed academic programs.

University of Florida 31% of graduate and 26% of undergraduates reported sexual advances from faculty. 52% of those pursuing non-traditional degrees reported knowing at least one instructor who made negative remarks regarding women in general.

Claremont College, Los Angeles, 1981. 800 women responded. 50% had experienced sexual harassment; of that 50%, 1 in 10 said they had quit a job because of sexual harassment.

Sangamon State University, 1979. 1,495 Illinois State government female employees responded. 59% said they had experienced sexual harassment.

University of California at Berkeley Questionnaire to one-sixth of female graduate students - 50% responded saying 20% had received sexual attentions, either as sexual remarks, touching, or propositions, from their professors.

## SECTION 4

## VICTIMS: THE EFFECTS AND COSTS

## VICTIMS: THE EFFECTS AND COSTS

### WHO ARE THE VICTIMS?

Often women are harassed by men who exert power over them, either on the job or in school. Either men or women may be harassed by a person of the same sex and women may occasionally harass men. People may be harassed by workers or fellow students. Women in traditionally male fields may be systematically harassed by their male peers in an attempt to drive them away.

A frequently raised example is the complaint of a female student subjected to sexual remarks by the teacher of a predominantly male class. She claims that the environment is offensive and that her rising hostility interferes with her ability to perform well. The remark maker claims he is joking and that such language is part of the usual working environment.

Victims are picked regardless of race, color, religion or national origin. There are cases of 50- and 60-year old women being harassed as well as teenagers on their first job. Harassers often pick the most vulnerable victim to make these demands upon (i.e., the person who can least afford to resist because they need the job most and may be the least experienced.) Those who need their jobs most desperately, in order to support themselves or their families, may be singled out for sexual harassment because they fear losing their job. People suffering from sexual harassment are very aware of the economic power usually held over them by the harasser. They hear a threat, implicit or explicit, that they have to go along with sexual activity or suffer the consequences. So they don't tell anyone.

In the final analysis, we are all victims. Some of us suffer from harassment ourselves. We are also victims when our co-worker or fellow student leaves the school or is unable to function properly because of harassment. The educational community is a victim when the person doing the harassing is left unchallenged and free to seek another person to harass.

### WHY DON'T I HEAR MORE ABOUT SEXUAL HARASSMENT?

Most sexual harassment victims have not reported what has happened to them. They are afraid that other people will say they "asked for it", or that no one will believe them. They are afraid of reprisals if they complain. Many people quietly drop out of school or change jobs without ever telling anyone they have been harassed.

### EFFECTS OF SEXUAL HARASSMENT ARE VARIED AND SEVERE:

1. Failure to comply with sexual demands or complaining about sexual harassment often results in retaliatory actions including: negative job evaluations, poor recommendations, demotions, loss of job training or impossible standards.

2. Sexual harassment heightens the role conflict faced every day by women working outside their homes.

3. It belittles aspirations, it undermines self-confidence and self-esteem and undercuts women's motivation to excel.

4. Sexual harassment creates an intolerable and stressful working condition hazardous to mental and physical health. Anxiety, nausea, headaches, high blood pressure, sleeplessness, and ulcers are typical for victims of sexual harassment.

5. Sexual harassment forces women off jobs, which contributes to the cycle of unemployment and poverty.

6. Sexual harassment contributes to low productivity, inefficiency and job dissatisfaction which affects employers as well as society in general.

7. Sexual harassment on the job means energies of victims, harassers, and management are misdirected in nonproductive, non job-related activities.

VICTIM RESPONSE TO SEXUAL HARASSMENT

Helplessness The person feels there is nothing s/he can do to stop the perpetrator. The harasser may be stronger or more verbally adept, or the victim may have been caught by surprise. The victim may have been confined in a car or office, or a place it may be difficult to leave. As a result of feeling helpless, the victim may accede to the harasser's suggestion or suffer the remark or gestures in silence.

Guilt The victim believes they brought it on. The victim may think they were too friendly and so led the harasser on. This guilt can prevent them from actively responding since they feel they are getting what they deserve.

Fear The victim may wonder about the consequences if they refuse the harasser's request. They may fear for their physical safety or may be afraid they will fail the class, lose a job or alienate the harasser.

Empathy The victim may empathize with the harasser and not want to make him/her feel bad. They may think, "He'll feel so rejected if I say no", or "he seems so lonely", or "He didn't mean any harm. If I tell anyone about this, his career may be ruined".

Ambivalence Even though the victim may feel offended by the behavior, they may want to get closer to the harasser or feel flattered by the interest. This ambivalence makes it difficult to refuse the demands or confront the offensive behavior.

(Susan Kaufman and Mary Lou Wylie,"One-Session Workshop on Sexual Harassment," NAWDAC, Winter, 1983)

## EFFECTS OF SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

Another common reaction to sexual harassment is an attempt to escape the situation in order to avoid the harasser. Some students do this by dropping courses; others withdraw from school; still others change majors or alter career plans. Some people cope with sexual harassment by ignoring the incidents with hope that they will not recur. (Till, 1980)

They may be angry or embarrassed. Some students report feeling dissillusioned because their inherent trust in faculty members has been betrayed. This sense of betrayal is especially strong when students have had respect and admiration for the faculty members who harass them. (Phyllis Meek, Ann Lynch, Journal NAWDAC, Winter 1983)

## COSTS OF SEXUAL HARASSMENT

Losing a sexual harassment suit is as costly and damaging as losing any kind of Equal Employment Opportunity action. Courts are awarding money for back pay, reinstatement, workers' compensation, unemployment compensation, and attorneys' fees. The American Society of Personnel Administration estimates 200 settlements or consent decrees between 1977 and 1982 totalling more than $9 million.

Plaintiffs v. Port Angeles School District; Port Angeles, WA (1984);
4 plaintiffs, $440,000.

Plaintiff v. Police Department, Michigan (1984);
1 plaintiff, $400,000, mental anguish and emotional damage.

Shore v. Federal Express Corp.; Memphis, Tenn.
$157,000 damages.

Paty v. Puget Sound National Bank; Tacoma, WA; (May, 1984)
Judgement totaling $500,000.

Nancy Henderson v. Pennwalt Chemical Corporation; Tacoma, WA; (December 1982);
Damages $115,000.

Leona Ellis v. City of Tacoma Police Department; Tacoma, WA; (October, 1981);
Damages $150,000.

Leona Ellis v. City of Tacoma Disability Board; Tacoma, WA;
Suit filed June, 1982.

Jennie Petrae v. Puget Sound Naval Shipyard; Bremerton, WA; (November 1982);
Damages $17,000.

Ferol Carolson v. Irwin Kleinman; Federal Bankruptcy Court; Seattle; (June 1982);
Restitution for lost wages and counseling for victim; three years probation for harasser, 60 days in jail, completion of sexual offender program.

Plaintiffs v. Manager, Grocery Store Chain; Clallum County, WA; (June 1982);
Settlement for damages, emotional stress, back pay, loss of consortium (one plaintiff); amount undisclosed.

Vivian Ehly v. Morgan Martin & State Dept. of Social & Rehabilitative Services;
Pierce County, WA; (June 1982);
Suit filed June 18, 1982.

Plaintiff v. Shipping and Tug Company; Washington;
Settlement included policy for company, re-employment; $14,890.

Plaintiff v. Sales Company; Washington;
Settlement included policy; $25,000

Plaintiff v. Restaurant; Washington;
Settlement included policy, training; $9,500 mental anguish plus $2,619 back pay.

Plaintiff v. Grocery Store; Washington;
Settlement included supervisory training, $1,127; payment of medical bills, credit for sick leave used for stress.

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# SECTION 5

# WHAT CAN STUDENTS DO TO STOP IT?

## INFORMAL METHODS

## WHAT CAN STUDENTS DO TO STOP SEXUAL HARASSMENT?

Any student believing that (s)he is being sexually harassed should act promptly in order to resolve the harassment at the lowest possible level. Although not required to do so, a student should be encouraged to utilize the informal steps outlined below before pursuing more formal or legal steps. (It should be noted that one must file a charge or complaint with the administrative agency or court within a specified time period, or else one will be precluded from taking formal action.)

### INFORMAL STEPS

Informal steps may include resolution of the harassment between the victim and alleged harasser with or without written materials or the involvement of any third party.

The following is a list of several alternative methods that a victim may choose to stop the sexual harassing behavior, including but not limited to:

1. Tell the Harasser the Behavior is Unwanted

   The victim should speak directly to the alleged harasser and inform the person that the harassment is unwelcome and must stop immediately. The victim should tell the harasser why the behavior is offensive, how the victim feels, and how the victim would like the behavior to change. This conversation may be conducted in private if the victim feels comfortable that the matter can be handled confidentially.

   Students can often feel powerless in such situations and may feel that, by meeting the harasser alone, it could be misinterpreted as approval of the behavior. In addition, the victim often finds it difficult to confront the harasser, and may end up rushing through the confrontation to get it over with. To get support, a student should talk to other students and find out if they or anyone else they know has been harassed by the same person. The students as a group could approach the harasser. Having other persons present at a confrontation provides witnesses should the harasser try to retaliate.

2. Write a Letter to the Harasser

   If the student(s) have talked to the harasser and the sexual harassment continues, they should write a letter to the harasser which describes the incidents and explains why they are offensive. (Keep a copy of the letter and any responses.) (See: Writing a Letter to the Sexual Harasser: Another Way of Dealing with the Problem, Appendix B )

3. Keep a Journal

   Students should keep a journal of all incidents with dates, times, places

and persons who have seen the activity. It is also important to record physical and emotional conditions.

4. Seek Assistance Through a Third Party

The victim should meet with a third party to discuss the situation. Students may seek the assistance of parents, clergy, school counselor, teachers or administrator or other adult friends they trust. A confidential discussion of the situation can help develop other options for resolution. In choosing a third party with whom to talk, the victim should consider: does s/he trust the person to listen sympathetically and to maintain confidentiality, and will the person have information about the options available for resolving such harassment?

5. File a Complaint with a School Administrator

The student should inform a higher authority of the problem such as a school administrator. School counselors also often handle these problems. A student may seek this route with the assistance of parents or supportive friends. The student should submit the problem in writing (and retain a copy) since it can be used as documentation if more formal steps become necessary.

Students should feel confident in the effectiveness of bringing such problems to the attention of school officials. Formal complaint procedures are becoming more common for students to use. Students should feel that sexual harassment is taken seriously, that confidentiality is maintained to the extent possible, and that complainants are adequately protected from retaliation.

## STRATEGIES FOR ADDRESSING SEXUAL HARASSMENT BY STUDENTS

- Encourage students to think about strategies for recognizing sexual harassment and addressing it when it does occur.

- Expose students to various strategies for addressing social problems.

- Help students clarify their own values related to the choices they make about the different strategies for addressing social problems.

If students have become interested in questions about policies and discipline codes, encourage a small group in conjunction with teachers and administrators to create sexual harassment policy or code for the school. The students might work through the student council or set up a separate and autonomous committee.

Invite speakers from women's groups, schools and universities, and the business community to participate in a panel discussion for an assembly on sexual harassment.

Encourage students to write a short play or set of skits about sexual harassment and then perform them at the school or at other schools. Videotape a performance and then use the tape in other classes and training workshops.

Encourage students to write articles for the school paper.

Have students conduct a survey in the school about sexual harassment.

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1979



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The Student Voice

Volume One, Number Four

Boston Students Newsletter

1981

# Sexual Harassment Workshop at B.H.S.S.C.

by Sandra Hall

The Boston High School Student Coordinators (BHSSC) attended a workshop which dealt with sexual harassment. This workshop defined sexual harassment in its varied forms.

Now many adults would question why students should attend such a workshop, but I think that everyone who is female or male should know when they are being sexually harassed and what they can do about it. At this workshop we learned that the definition of sexual harassment goes from leering, to attempted rape and rape. All unwelcomed verbal comments, gestures or any physical contact is sexual harassment.

It is said that women invite sexual harassment by their behavior or by the way they dress but not so, in fact harassment is an assertion of hostility and/or power expressed in a sexual manner. Sexual harassment is not the fault of the women or the men who are bothered. All kinds of people are sexually harassed regardless of their appearance, race, sex, marital status, occupation, or social-economic class.

Although there are many places where you can report such actions many people are afraid to complain. There are also many who take it as a joke but YOU DON'T HAVE TO TAKE IT!!!

This problem effects approximately 35 percent of the female workforce and also a large amount of female students in schools. Women who are being sexually harassed can bring suit under Title VII of the 1974 Civil Rights Act against their employers, or they can contact Alliance Against Sexual Coercion (AASC) in Cambridge.

The Alliance was formed to fight sexual harassment at the workplace. If you wish to contact anyone for further information about sexual harassment you may contact: Nan Stein, Equal Education Opportunity, Greater Boston Regional Education Center, Cambridge, Mass., 01583, Phone No. 547-7472. OR Pam Chamberlain, Boston Student Service Center, 31 St. James Ave., Boston, Mass., 02116, Phone No. 727-5757.

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## SECTION 6

## WHAT CAN EMPLOYEES DO

## TO STOP IT?

## INFORMAL METHODS

## WHAT CAN EMPLOYEES DO TO STOP SEXUAL HARASSMENT?

Any employee who believes that s/he is being sexually harassed should act promptly to resolve the harassment at the lowest possible level. Although not required to do so, an employee should be encouraged to utilize the informal stpes outlined below before taking more formal or legal steps. (However, there are specific time periods during which a formal legal charge must be filed with the administrative agency or a court. Failure to file a charge or complaint within the time period will preclude being able to take legal action.)

### INFORMAL STEPS

Informal steps may include resolution of the harassment between the victim and alleged harasser with or without written materials or the involvement of any third party.

The following is a list of several alternative methods that a victim may choose to stop the sexual harassing behavior, including but not limited to:

1. Tell the Harasser the Behavior is Unwanted

   The victim should speak directly to the alleged harasser and inform the person that the harassment is unwelcome and it must stop immediately. During the "confrontation", the victim should tell the harasser why the behavior is offensive, how the victim feels, and how the victim would like the behavior to change. This conversation may be conducted in private if the victim feels comfortable that the matter can be handled confidentially.

2. See if Others are Affected

   The victim should see if others in the workplace are experiencing the same situation. They may be a source of support and assist in resolving the problem.

3. Keep a Journal

   Victim should keep a journal of all incidents with dates, times, places and persons who have seen the activity. It is also important to record physical and emotional conditions. Journals become important documentation should future legal action be instituted.

4. Write a Letter to the Harasser

   If the victim has talked with the harasser and the behavior has continued, of if the victim does not wish to confront the harasser, s/he should write a letter instead. The offensive behavior(s) should be described and an explanation as to why it is unwanted should be given. (Keep

a copy of the letter and any responses.) (See: Letter Writing as Documentation Guidelines, Appendix C. )

5. Point Out the Unwanted Behavior

The victim may point out the alleged harasser's behavior in a public setting with other persons as witnesses. Include what the alleged harasser is doing, the effect on the victim, and how the behavior should change. This statement must be clear and should be as non-threatening as possible. Fox example, "Look, I do not enjoy your calling me "honey". It makes me very uncomfortable. I enjoy working with you and would like to maintain a professional relationship; I am here to do my job just like you. Now, let's get back to work."

This option may be effective when: a) the harassment has occurred in a public setting with witnesses (rather than the victim "creating" an opportunity to publicly confront the alleged harasser); b) the harassment may have been unintentional; and c) the discussion can be handled in a straight-forward, honest and non-inflammatory manner. However, it is also possible that this approach could escalate tensions, so it should be used with caution.

6. Inform a Higher Authority

Should the problem continue, the victim may want to file a formal complaint internally or seek confidential assistance by informing a neutral third party. If a third party is not available, the victim could seek help through the personnel office, human resources specialist, affirmative action coordinator or designated Title IX coordinator. The victim should take notes and keep a record of the discussion and any promised action. Following the discussion, the victim can determine whether, and how, to pursue the matter. Each school should have its own grievance procedure to handle such complaints.

7. Obtain Witness Statements

If a victim chooses to take further action, they may discreetly obtain statements from witnesses and others who have experienced the same treatment. Also, personal contacts, such as friends, family and counselors who have been aware of this treatment, may act as witnesses.

8. Toward More Formal Steps

If the problem continues and the employer has not made reasonable steps to address the situation in a reasonable period of time, the victim may contact appropriate agencies. Sometimes filing a complaint with the State or City Human Rights Commission or Equal Employment Opportunity Commission forces the employer to acknowledge the situation and try to resolve it. However, some victims feel that by taking formal action

they have no alternative but to quit their jobs because of the unbearable working conditions. Victims may be eligible for unemployment compensation benefits, and if successful in court, back pay and compensatory damages.

Informal steps are most suitable for situations where the victim simply wants to stop the harassment; formal actions usually are necessary to obtain compensation for damages such as loss of pay or unfair denial of a job opportunity.

## UNION GRIEVANCE PROCEDURES

Union grievance procedures are available for employees covered by a collective bargaining agreement.

It is not necessary for the contract to include specific language defining sexual harassment as a cause for grievance; it is sex discrimination. A union member may grieve sexual harassment as a violation of the contract's non-discrimination clause.

Union members should contact their shop steward or business representative to initiate union action.

Failure of the union to process a legitimate grievance properly may be a breach of the labor organization's duty of fair representation under the National Labor Relations Act.

## UNEMPLOYMENT COMPENSATION

Most State Departments of Labor now recognize sexual harassment as an intolerable job condition which is good cause for quitting and will grant Unemployment Benefits to victims who leave their jobs for this reason. However, sexual harassment can be difficult to prove. If a person has not carefully documented her/his case, the administrative agency may not find in the victim's favor.

## SECTION 7

## LEGAL REMEDIES

PART ONE: LEGAL REMEDIES FOR SEXUAL HARASSMENT

PART TWO: SEXUAL ABUSE AND SEXUAL HARASSMENT

## PART ONE:

## LEGAL REMEDIES FOR SEXUAL HARASSMENT

### I. INTRODUCTION

Sexual harassment in the workplace or in the school is a violation of federal, state, and local laws. Employers, school districts, supervisors, and harassers may be held legally liable for damages to the victims of sexual harassment.

Victims of sexual harassment have several avenues of legal remedies available to them. Those avenues include:

- Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment;
- Title IX of the Education Amendments of 1972, which prohibits discrimination in education;
- Washington State Law Against Discrimination;
- Washington State Common School Code;
- Private civil suits; and
- Criminal complaint.

These remedies are not exclusive, and victims typically seek relief through a combination of remedies available.

### II. STATUTORY REMEDIES

#### A. Title VII of the Civil Rights Act of 1964

Title VII prohibits discrimination in employment based on sex, race, national origin, or religion. Sexual harassment is an unlawful form of sex discrimination under Title VII.

Title VII is enforced by the U.S. Equal Employment Opportunity Commission (EEOC). The law applies to employers with 15 or more employees, employment agencies, and unions that operate a hiring hall or have 15 or more members.

The administrative process is begun by filing a charge with the EEOC. The charge is a jurisdictional prerequisite to filing a lawsuit, and must be filed within 180 days of the most recent act of discrimination. The 180 day period is extended to 300 days if the charge is first filed with a state or local agency, such as the Washington State Human Rights Commission.

The EEOC investigates charges of discrimination and makes a finding on the merits of the charge. The victim has a right to file a private lawsuit in federal court after obtaining a Notice of Right to Sue. The Justice Department also has the authority to sue on behalf of the victim.

Remedies available under Title VII include backpay plus interest for any wages lost as a result of the discrimination; affirmative relief, such as reinstatement, hiring, or promotion; and attorneys' fees.

The employer is held liable for sexual harassment in its workplace. If the harasser is a supervisor, manager, or agent, the employer will be held strictly liable, whether or not the employer knew of the harassment, and even if the employer had a policy prohibiting sexual harassment. If the harasser is a coworker, the employer will be held liable if it knew or should have known about the harassment and failed to take prompt and appropriate corrective action. The employer may also be held liable for harassment by non-employees where the employer knew or should have known about the harassment and failed to take prompt and appropriate corrective action.

B. Washington State Law Against Discrimination

The Washington State Law Against Discrimination prohibits sexual harassment in employment. It is enforced by the Washington State Human Rights Commission (WSHRC), and applies to employers with 8 or more employees and to unions.

Charges must be filed with the WSHRC within 180 days of the most recent act of discrimination. WSHRC will investigate charges of discrimination, and where cause is found to believe the charge is true, WSHRC may take the case to an administrative hearing.

Individuals also have a private right to file suit under the state statute without filing a charge with the WSHRC. Remedies include those available under Title VII (back pay, affirmative relief, and attorneys' fees), as well as compensatory damages for losses suffered, including damages for emotional distress.

The employer is held liable for sexual harassment in the workplace. The standards are identical to Title VII.

C. Title IX of Education Amendments of 1972

Title IX prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance. Title IX protects both students and employees.

Title IX is enforced by the Office for Civil Rights (OCR), Department of Education. The administrative process is begun by filing a charge of discrimination within 180 days of the most recent act of discrimination. OCR will investigate the charge and make a finding.

Remedies for employees are similar to those available under Title VII: employment or reinstatement, back pay and benefits, and future compliance. For students, remedies may include reassignment of the instructor, training, or other appropriate relief.

If the school district refuses to remedy the situation, its federal funds may be cut off. Suit by the government could result in injunctive relief, damages, and attorneys' fees.

Victims also have a private right of action under Title IX. Cannon v. University of Chicago Medical School, 441 U.S. 677 (1979). In Alexander v. Yale University, 631 F.2d 178 (2nd Cir. 1980), a group of women sued Yale University for failing to pursue their complaints of sexual harassment.

D. Washington State Common School Code

Washington State law specifically prohibits sex discrimination in the state's public schools. Chapter 28A.85 of Washington Common School Code provides that "discrimination on the basis of sex for any student in grades K-12 of the Washington public schools is prohibited".

The statute also provides that any person aggrieved by a violation of the code has a right of action in superior court for civil damages and equitable relief. RCW 28A.85.040. In addition, the Superintendent of Public Instruction has the power to enforce the statute through termination of state money to the offending school, the termination of specific programs, the institution of a mandatory affirmative action program, or placing the offending school on probation with appropriate sanctions until compliance is achieved.

## III. COMMON LAW REMEDIES

In addition to the statutory remedies discussed above, victims may have other remedies available by filing a civil action in state court. These "common law" remedies may be used as an alternative to statutory remedies or in addition to statutory remedies.

In common law actions, an individual may sue the employer or school district, the harasser, and any supervisory or management person who knew of the harassment and failed to take appropriate corrective action.

Remedies include all of the remedies available under the statutory claims, and in addition, money damages including damages for emotional distress or humiliation.

Victims of sexual harassment have successfully used a number of different theories to seek redress, and some examples are explained below.

A. Assault and Battery

Unwanted sexual overtures may constitute an assault, and if actual touching occurs, a battery.

B. Intentional Infliction of Emotional Distress

A victim may file an action for emotional distress based on unwanted sexual advances, even in the absence of any actual physical contact. The victim must show that emotional distress was inflicted intentionally or recklessly, that the conduct was extreme and outrageous, and that as a result of the outrageous conduct, the victim suffered severe emotional distress

The court will consider the nature of the parties' relationship (for example, teacher-student, boss-employee), as well as the particular victim's susceptibility to the type of conduct, taking into account changing social conditions.

C. Malicious Interference with Economic Advantage

The lead case on this theory of recovery is Kyriazi v. Western Electric Co., 461 F. Supp. 894 (liability), 476 F. Supp. 335 (D.N.J. 1979) (damages). In that case, each of five co-workers were assessed punitive damages for sexual harassment of the plaintiff. Washington courts have recognized the viability of such a tort claim, albeit not in the context of sexual harassment. See eg. Schymanski v. Dufault, 80 Wn. 2d. 77, 491 P. 2d 1050 (1971); Burke Thomas Inc. v. Masters Mates & Pilots, 92 Wn. 2d 762, 600 P. 2d 1282 (1978).

D. Contract Remedies

Courts have recently begun to recognize an implied covenant of good faith and fair dealing in employment relationships, even in the absence of a written employment contract. Sexual harassment in the workplace, or retaliatory action for having refused or complained, is a violation of the covenant of good faith and fair dealing.

In addition, Title IX of the Education Amendments of 1972 requires that every school prominently display a notice to the public that it does

not discriminate on the basis of sex. It has been suggested that these notices may create a contract between the school and its students or faculty, and that sexual harassment constitutes a breach of that contract.

## IV. CRIMINAL ACTIONS

Just as assault and battery are criminal offenses, so too are many of those acts of sexual harassment falling within sexual crimes and misdemeanors. Usually, any explicitly sexual acts -- from fondling to self-exposure to rape -- may be prosecuted by states as sex crimes.

The victim must report such assaults to the police, who investigate and make a report to the local prosecutor. If the prosecutor takes the case to trial, the victim serves as a witness for the prosecution, and does not bear any legal expenses involved in the trial. A criminal conviction does not provide a remedy to the victim for job-related damages and financial losses.

## WHAT YOU SHOULD KNOW ABOUT FILING A DISCRIMINATION CHARGE

### (EMPLOYMENT DISCRIMINATION)

Equal Employment Opportunity Commission
710 - 2nd Avenue
Seattle, WA 98104 (206) 442-0968

Title VII of the Civil Rights Act of 1964

Employment discrimination based on race, sex (sexual harassment and pregnancy), color, religion, national origin. (Age Discrimination in Employment Act 40-70)

Employment discrimination as a result of:
- filing a discrimination charge
- assisting in an investigation
- opposing employment practices which are unlawful under Title VII

Filing a complaint:
- 240 days from the date of discrimination or up to 300 days in some instances

To file a charge you must:
- be interviewed by an Intake Officer of the Commission
- provide information on the complaint, including records and names of witnesses
- swear or affirm to the charge of discrimination
- cooperate with the Commission

A charge may be closed with a no-fault settlement, reasonable cause or no-reasonable cause finding or other administrative closures.

Remedies available under Title VII:
- employment or reinstatement
- back pay
- back benefits
- letters of reference
- expunge personnel files

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### (EDUCATIONAL SERVICES & EMPLOYMENT)

US Dept. of Education, Office for Civil Rights
Third & Broad Bldg., M/S 106
2901 - 3rd Ave., Seattle 98121 (206)442-1596

Title IX of the Educational Amendments of 1972

Prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance.

Discrimination as a result of:
Filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing.

Filing a complaint:
- must be within 180 days from the date of the alleged discrimination unless the time for filing is extended by the responsible department official or designee.

To file a complaint you must:
- identify the complainant by name and address
- generally identify or describe those injured by the alleged discrimination (names of the injured parties not required)
- identify the affected institution or individual alleged to have discriminated
- provide sufficient detail to inform OCR what discrimination occurred and when

Permit OCR to commence an investigation.

A complaint may be closed by a letter of Finding summarizing the results of the investigation and the compliance status of the recipient, or other Administrative closures.

Remedies available under Title IX:
For employees:
- employment or reinstatement
- back pay
- back benefits
- methods of achieving compliance

For students:
- reassignment of instructor; in-service training; or other appropriate action.

### (EMPLOYMENT DISCRIMINATION)

Washington State Human Rights Commission
1601 - 2nd Avenue Building
Seattle, WA 98101 (206)464-6500, voice/TTY
(Other offices: Spokane (509)456-4473; Pasco (509) 545-2379; Yakima (509)575-2772; Olympia (206)753-6770

RCW 49.60

Employmentdiscrimination based on race, creed, color, national origin, age 40-70, marital status, disability, sex (sexual harassment and pregnancy)

Employment discrimination as a result of:
- filing a discrimination charge
- assisting in an investigation
- opposing employment practices which are unlawful

Filing a complaint:
- within 6 months after the alleged act of discrimination

To file a charge you must:
- any person claiming to be aggrieved by an alleged unfair practice may, by themself or their attorney, make, sign, and file with the board a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars.

A charge may be closed with a no-fault settlement, reasonable cause or no-reasonable cause finding or other administrative closures.

Remedies available under RCW 49.60:
- employment or reinstatement
- back pay
- back benefits
- letters of reference
- expunge personnel files
- up to $1,000 for loss of rights

City agencies also available: Seattle Human Rights Dept., 105 - 14th Ave., Ste. C, Seattle 98122, (206)625-4384; Tacoma Human Relations Commission, 740 St. Helens, #307, Tacoma 98402, (206)591-5151.

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SEXUAL HARASSMENT: A REPORT ON THE SEXUAL HARASSMENT OF STUDENTS

by Frank J. Till

August 1980-Report of
THE NATIONAL ADVISORY COUNCIL
ON WOMEN"S EDUCATIONAL PROGRAMS

A STUDENT'S GUIDE TO LEGAL REMEDIES FOR SEXUAL HARASSMENT

| REMEDY | DESCRIPTION | TYPES OF BENEFIT/SANCTION | DURATION | DRAWBACKS |
|---|---|---|---|---|
| Title IX, 1972 Education Amendments | Federal law prohibiting sex discrimination in education; complaints may be filed with any Federal agency which grants assistance to the school, or private suit may be initiated. | Agencies can require school to correct problem or face cut-off of Federal funds; suit may result in injunctive relief; some possibility of damages through litigation; successful plaintiffs eligible for attorneys' fees awards under Attorneys Fees Act. | With some exceptions, agencies are required to resolve complaints within 195 days of receipt of complaint; if school does not come into compliance, enforcement can take several years; litigation may provide quick short-term relief, but suits will take a year or more to complete. | Only the Education Department, Department of Energy and Department of Agriculture have final regulations; other agencies may not accept complaints; only the Education Department has full-scale enforcement program; no hard policy from any agency on coverage of harassment issues, so complaints may languish while agencies work out policy problems; no real judicial history to provide precedent; risky. |
| Civil Lawsuits | Tort lawsuits; breach of contract. | Financial compensation for any losses or physical/emotional/mental injury; injunctions. | Varies; 2-3 years likely where damages are sought. | Expensive (fees come out of, and may exceed the amount of any damages); slow. |
| Rape and other criminal statutes | Varies by State; usually includes sexual assault, assault, and battery claims; prosecution at discretion of police authorities, public prosecutor. | Fines, imprisonment. | 1 year. | Compensation for victim possible but unlikely; prosecution unlikely in "minor" crimes without witnesses and/or strong corroboration; great emotional strain; convicted offenders from upper socio-economic classes likely to receive only suspended sentences or court ordered therapy even where rape is involinvolved. |
| State Civil Rights Laws | Prohibit sex-based discrimination; usually enforced by Human Rights Commissions; great variance from State to State. | Varies; in some States can include cease and desist orders, jury trial award of damages. | Great variation; 6 months to 3 years. | Differ from State to State; may be difficult to secure agreement that sexual harassment of students is covered. |

## PART TWO:

## SEXUAL ABUSE AND SEXUAL HARASSMENT: DEFINITIONS AND LEGAL SIMILARITIES

Sexual abuse of children has received wide-spread attention as a problem affecting a large number of children. Sexual harassment of students has similarities with sexual abuse in legal definitions and for criminal prosecution.

A recent report estimates that there may be at least 336,200 children nationally who are sexually abused each year. Statistically, one in four girls and one in seven boys will be sexually abused before they turn 18. In 80% of these cases, the child is abused by someone she or he already knows -- a relative, a neighbor, a friend of the family, another person she or he sees often or occasionally.

Studies show that 50%-80% of all teenage girls in the United States engaged in juvenile prostitution have been victims of incest or other repeated molestation. In many cases, the girl has run away from home and taken to the streets to escape abuse, only to be re-victimized.

As many as 75% of the sex offenders interviewed in prison studies say that they were sexually abused as children. More than 90% of the sex offenders listed on court records are male.

Victimization surveys suggest that one in ten women is raped, most of them young, and many teenagers. This means that a significant portion of the population is involved by adults in activity which is illegal and which is considered an abnormal event in the process of human growth and development.

Sexual victimization is coercive or non-consenting sexual activity. Whenever there are sexual acts between adult and child they are always coercive because a child is unable to give truly informed consent to such a relationship. Children are physically and psychologically dependent on adults and thus are not in a position of equality. In an unequal relationship, true consent is not possible. Children are victims of a range of types of sexual abuse.

Molestation: Sexual touching other than intercourse.

Child sexual abuse: Sexual abuse of someone 18 years or younger.

Rape: Forcible sexual intercourse without mutual consent. Intercourse means the penetration of the vagina or anus by a penis or other object, or the mouth by a sexual organ.

Washington State law defines three degrees of rape:

1. First Degree Rape. Forced sexual intercourse where the offender uses or threatens to use a deadly weapon, kidnaps the victim, seriously injures the victim, or breaks into the building or vehicle where the victim is.

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2. Second Degree Rape. Forced sexual intercourse.

3. Third Degree Rape. Sexual intercourse where force is not used, but the victim did not consent to the act, and clearly expressed this lack of consent to the offender.

Force does not necessarily have to be actual physical force. It also means the threat of force, or an implied threat of force.

Indecent liberties: Forced sexual contact between two people, where sexual intercourse (as defined above) does not occur. If the victim is 13 years of age or younger, the crime is committed even if force is not used.

Incest: Any sexual contact between family members in which the adult (or relative four years older) seeks or gains sexual excitement or gratification through the child. This may include fondling, manual or oral manipulation of the genitals, or intercourse. Family members include father, mother, grandparents, aunts, uncles, brothers, sisters, cousins, adoptive and step relations.

Statutory rape: Definitions is the same as the definition of rape. There are also three degrees of statutory rape:

1. First Degree Statutory Rape. When the offender is 13 years or older and the victim is 11 years or younger.

2. Second Degree Statutory Rape. When the offender is 16 years or older and the victim is 11, 12, or 13 years.

3. Third Degree Statutory Rape. When the offender is 18 years or older and the victim is 14 or 15 years.

Other sexual activities which are imposed on children are voyeurism, exposure, and involvement in photography or filming for pornographic purposes.

Sexual Exploitation

Sexual exploitation involves a continuum of degrees of inequality between partners. In some cases the difference is one of age where an older man or woman prefers younger partners and the issue is that of greater sophistication or life experiences in the older person. In other cases there is a disparity of power as well as age, such as an older person in a position of authority. Where there is an obviously unequal situation such as teacher-student, employer-employee, or counselor-client at any age, the possibility of exploitation exists. Even when the teenager actively pursues the relationship s/he is not always equipped to handle it and the adult must be able to handle the situation.

## Effects of Sexual Assault and Sexual Harassment

The full impact of victimization is not known. The effect of sexual assault on the victim can be similar to that of sexual harassment. Emotions may be fear, anger, helplessness, humiliation, self-blame, embarrassment, disgust or revenge. The reactions of a young person are similar to those of an adult: mainly stress reactions to a threatening situation. This is true even though most children who are victims of sexual assault/harassment are not physically hurt nor are they threatened in the same way as adults.

A younger child may not know whom to tell, or how to say what happened. They can be confused, not fully understanding what happened. A younger child frequently is afraid of being rejected by adults they may tell, and sometimes is concerned that the offender (often known to the victim) will be punished if anything is said. Most children need to be assure they will be believed and protected from further abuse.

Adolescents under stress may appear casual or indifferent about the situation. They are frequently concerned about their reputation, not wanting their friends or classmates to find out about the assault.

## Reporting Responsibilities

Washington State Law (RCW 26.44) requires that these persons must report suspected child abuse: medical practitioners, professional school personnel (including but not limited to teachers, counselors, administrators, child care facility personnel, and school nurses), social workers, licensed psychologists, pharacists, and employees of the Department of Social and Health Services. Persons who report suspected child abuse or who give testimony in child abuse cases are immune from civil or criminal liability. Failure of any of these persons to report child abuse, if they have evidence or suspicion, is a misdemeanor.

In Washington State, Child Protective Services (CPS), part of the State Department of Social and Health Services, is the agency where suspected child abuse and neglect is reported and investigated. CPS works in conjunction with local law enforcement for removal and temporary placement of the child (where this is necessary) and interrogation and arrest of the offender.

Whereas sexual assault situations must be reported by law to outside authorities, sexual harassment cases generally are handled through administrative avenues. Often this allows sexual harassment cases to be overlooked within administrative ranks. These cases must be addressed directly to avoid further legal liability under Title IX of the Education Amendments of 1972, should a complaint be filed.

Since most secondary school students are minors, many of the sexual assault definitions apply to acts of sexual harassment. Unwanted touching, fondling

or an adult's act of exposure require reporting to the Child Protective Services. Criminal codes apply in addition to any procedures a school district may have regarding criminal charges against staff, teachers or administrators.

Child sexual abuse is not fully understood. Sexual harassment of students by adults in the education system has been a hidden issue. Current social and political values fail to successfullly control sexual exploitation of children by adults. The educational community can take more responsibility for creating awareness of these problems and preventing future abuse.

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## ILLUSTRATIVE CASES

In the following cases, a school teacher's dismissal or the denial or revocation of his teaching certificate was held proper on the basis of his sexual act or acts with a student of the opposite sex.

Board of Trustees v. Stubblefield (197 )
16 Cal App 3d 820, 94 Cal Rptr, 318

A junior college teacher's behavior was held to constitute immoral conduct indicating unfitness to teach and evident unfitness for service, thus justifying dismissal. A deputy sheriff discovered the teacher in his automobile at night with a female student, where the teachers pants were lowered, exposing his penis, and the student, who was nude from the waist up, had her Capri pants unzipped and open at the waist.

Weissman v. Board of Education (1976, Colo.)
547 P2d 1267

The dismissal of a tenured male high school teacher for "immorality" was upheld where the teacher, on a field trip, engaged in activity with several female students, which the teacher characterized as "good-natured horseplay" and which consisted of touching and tickling the girls on various parts of their bodies and occasionally between the legs in proximity to the genital areas, there being reciprocal conduct on the part of the girls.

Lombardo v. Board of Education (1968)
100 Ill App 2d 108, 241 NE 2d 495

The court affirmed a denial of relief from the board's determination, where three female students in grades six through eight testified as to an elementary school band teacher's sexual advances toward them, which testimony was corroborated by that of a male student who had observed some of the incidents.

The girls testified that while in the teacher's band class, when he taught he would make them sit between his legs, put his arms around them, put his hands on their chest and touched with the palms of his hands 6-7 times; that on another occasion he kissed one of the female students on the cheek and stuck his tongue in her ear; and that he kissed her on the face and cheek a lot.

Other related cases:

Crawford v. Lewis (1916, 170 KY 589, 186 SW 492.

Denton v. South Kitsap School District (1973)
10 Wash App 69, 516 P2d 1080

Board of Trustees v. Hartman (1966)
246 Cal App 2d 756, 55 Cal Rptr 144

Morrison v. State Board of Education (1969)
1 Cal 3d 214, 82 Cal Rptr 175, 461 P2d 375, infra §10.

## SECTION 8

## LEGAL LIABILITY

## LEGAL LIABILITY

### I. INRODUCTION

Sexual harassment is against the law. It is a violation of federal, state and local statutes as well as a violation of common law principles. In some cases, it may also be a violation of the criminal code. Schools, administrators, and teachers may be held liable for incidents of sexual harassment in the schools.

In 1980, the Equal Employment Opportunity Commission (EEOC) adopted guidelines on sexual harassment in the workplace. The guidelines define sexual harassment, and identify who is liable for sexual harassment.

The Guidelines apply to schools as employers. They are also helpful in defining the problem and establishing liability when students are harassed by teachers, counselors, administrators, or staff.

### II. WHAT IS SEXUAL HARASSMENT

Sexual harassment is any unwanted sexual attention or behavior which interferes with work or school.

The Guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Such conduct is unlawful in the workplace when:

- submission to or rejection of such conduct is used as a basis for an employment decision; or
- submission to such conduct is a term or condition of employment; or
- such conduct has the purpose or effect of interfering with work performance; or
- such conduct creates an intimidating, hostile or offensive work environment.

The definition has three elements. There must be sexual behavior of some kind; it must be unwanted by the recipient; and it must interfere in some way with the recipient's work or school. The elements of unlawful sexual harassment are the same for both students and employees.

Interference with work or school can take many forms. It may be direct -- threat of a bad grade or losing one's job, for example. Or it may be indirect -- creating an offensive environment which affects the victim's ability to perform well. The courts are very clear that employers who tolerate a work environment where sexual harassment flourishes are violating the law. This is true whether or not the victim has suffered any loss of tangible benefits. Bundy v. Jackson, 64. F. 2d 934 (D.C. Cir. 1981).

## III. WHO IS LEGALLY LIABLE

### A. Schools, School Districts

The school may be held liable for sexual harassment of students or employees. Both federal and state statutes prohibiting sexual harassment look to the school for liability. Those statutes require schools to maintain a learning and working environment that is free from sexual harassment.

Under Title IX, a school may lose its federal funding if it fails to promptly resolve sexual harassment problems. The school may also be liable for back pay, interest, compensatory damages, attorney fees, and injunctive relief under Title VII, Title IX, Washington Law Against Discrimination, the Washington Common School Code, and common law remedies. See Section 7 for a more complete description of the statutory and common law remedies available to victims.

As an employer, the school district will be held liable for acts of its administrators, managers, supervisors, or agents. That is true even if the school was unaware of the harassment, and even if the school has a policy specifically forbidding sexual harassment. See Miller v. Bank of America, 600 F.2d 211 (9th Cir. 1979). With respect to harassment of students, teachers may be considered in a "supervisory" status for purposes of determining liability.

Schools may also be held liable for acts of coworkers, where the administration knew or should have known of the problem, and failed to take prompt and appropriate corrective action.

Schools may also be held liable for acts of non-employees, including suppliers, delivery people, etc., where the administration knew or should have known about the harassment, and failed to take prompt and appropriate corrective action. These situations are determined on a case-by-case basis, and take into consideration the amount of control the school has over the situation, and whether the school has made an effort to resolve the problem.

### B. Administrators

Administrators or supervisors may be held personally liable where they permitted sexual harassment to go on, and failed to take steps to correct it. See Kyriazi v. Western Electric Co., 476 F. Supp. 335 (D.N.J. 1979) (damages). In that case, the court ordered supervisors to pay, and prohibited the company from reimbursing them.

### C. Harassers

Under common law, the harasser may be held personally liable for acts

of sexual harassment. See Kyriazi v. Western Electric Co., supra.

In some cases, sexual harassers may be subject to criminal penalties, including imprisonment, where acts of sexual harassment constitute a violation of criminal laws.

## SECTION 9

## STRATEGIES FOR ADMINISTRATORS AND TEACHERS

## STRATEGIES FOR ADMINISTRATORS AND TEACHERS

School districts, administrators, and teachers can take steps to prevent and eliminate sexual harassment in schools.

The first step in accomplishing this goal is the establishment of a policy against sexual harassment. It should be a written statement that is distributed and explained to all employees and students. Such a policy puts everyone on notice that the administration takes the problem seriously, and that any incidents of sexual harassment will be dealt with promptly. As part of this section you will find a discussion of the elements of an effective sexual harassment policy, and a sample policy.

An important component of an effective sexual harassment program is the establishment of a procedure for receiving and resolving complaints of sexual harassment.

Title IX of the 1972 Education Amendments requires educational institutions to "adopt and publish grievance procedures providing for prompt and equitable resolution of students'. . . complaints alleging any action which would be prohibited by this part." (34 C.F.R. 106.8(b)) Moreover, while Title VII does not require employers to maintain grievance procedures, almost universal agreement has arisen in Title VII sexual harassment cases that there is no cause for judicial action if the employer takes prompt and remedial action upon acquiring knowledge of an incident.

Victims of sexual harassment are not legally required to exhaust internal grievance procedures before seeking help through an administrative agency or the courts. However, internal grievance procedures are often the quickest and most effective means of resolving the problem. Where the grievance procedure is perceived to be fair, effective, and prompt, victims are much more likely to seek a resolution that way, without involving government agencies, lawyers, or courts. Included in these materials are some suggestions for establishing an effecive grievance procedure. There are also suggestions on how to conduct an internal investigation.

Administrators, managers, and teachers should be provided training in recognizing sexual harassment and effectively dealing with complaints that arise. Because a certain amount of sexual harassment is the result of a lack of understanding, a sexual harassment policy coupled with training can be an effective means of preventing future incidents.

The overwhelming number of officials report that as soon as the company or administration began to take seriously the problem of sexual harassment, and communicated that to its employees, they were able to deal effectively with the problem. They found that employees were eager to use a grievance procedure that seemed quick and fair, and that they were able to resolve incidents within the company.

They found that the occurrence of sexual harassment was reduced substantially simply by announcing a clear and unequivocal policy and by providing training. And for incidents that did occur, victims were eager to use a grievance procedure which seemed fair and quick, and thus complaints were resolved within the company.

## IMPLEMENTING A SEXUAL HARASSMENT POLICY IN HIGH SCHOOLS AND VOCATIONAL SCHOOLS

A sample policy follows which can be used as a model for secondary and vocational schools. Included are several key elements of any effective sexual harassment policy: definition; a discussion of a specific grievance procedure; investigation guidelines; prohibition of retaliation; and emphasis on the importance of confidentiality.

Advice to administrators who are considering developing a policy or who believe their existing policy should be emphasized should consider the following:

1. A school administration must be strong in its commitment to adopt and follow through on a sexual harassment policy.

2. Identifying a few specific complaint managers is important. For example, with three case managers -- a guidance counselor, teacher, and administrator -- complainants can choose the person with whom they feel most comfortable discussing their situation. Although each of the three has different roles and power within the school, they are each authorized to receive confidential complaints and to attempt to resolve sexual harassment cases informally without informing other school personnel. Schools receiving federal funding are required to designate at least one employee to coordinate its efforts to comply with and carry out its responsibililities, including any investigation of any complaint. A recipient of federal funding shall adapt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints. (Secs. 901, 902, Education Amendments of 1972. 88 Stat. 373 374: 20 U.S.C. 1681, 1682)

3. Wide dissemination of a policy should be accompanied by training and discussion for students, teachers, guidance counselors and administrators. Awareness increases the possiblity of sexual harassment being identified early and stopped informally. (See Student Handbook sample from Minuteman Tech, Lexington, MA) Include sexual harassment awareness as part of the orientation and training of new employees.

4. Preventive training is most effective when it places sexual harassment in the context of social problems and clarifies that the cause is neither the failures of a particular school nor the inabilities of specific individuals to handle interpersonal problems.

For situations of adult-to-student harassment, it is recommended that specific disciplinary action will be taken. Some forms of sexual harassment of students by adults are considered violations of criminal law (see Legal Liability Section), and should therefore be stated as grounds for dismissal.

The presence or absence of sexual harassment within classrooms, shops, athletic activities, and school-sponsored groups or clubs should be incorporated into performance reviews of teachers and coaches. Similarly, whether complaints have been handled promptly and effectively should be incorporated into evaluations of guidance counselors and administrators.

Students and staff should feel confident in the effectiveness of the school's sexual harassment policy. Case law on Title VII workplace sexual harassment indicates that the employer is still held to a standard of liability if the school has a sexual harassment policy, but employees are either not aware of its existence or have no faith in its effectiveness. A major Title IX case found that a school may be held liable should an institution fail to respond to such complaints.

SAMPLE

## SEXUAL HARASSMENT POLICY

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature carried out by someone in the workplace or educational setting. Such behavior may offend the receipient, cause discomfort or humiliation, or interfere with job or school performance.

Principals and immediate administrative supervisors must make it clear to their staff and students that sexual harassment is prohibited by School District policy and is grounds for disciplinary action. All areas and activities of the District shall be free from sexual harassment.

Anyone who experiences sexual harassment should let the offender know immediately and firmly that you do not appreciate the behavior, or you should immediately contact the principal or immediate administrative supervisor. If additional help or advice is needed, you can call:

Affirmative Action Officer, Title IX Administrator or
Personnel Representative
(name)
(address)
(phone number)

You can speak to the affirmative action administrator confidentially without filing a complaint. In some cases suggestions may be given which will enable you to effectively discourage the offender yourself. Other cases may require intervention; if you both agree, the affirmative action administrator, or designee, will speak informally with the alleged harasser in an effort to correct the offending behavior and prevent retaliatory behavior.

Students or staff may file a formal grievance of sexual harassment in accordance with the policy. The District will carry out a thorough investigation and will protect the rights of both the person making the complaint and the alleged harasser.

The issues and charges will be examined as to: a) nature of conduct -- severity/frequency, and b) effect or impact of harassing behavior. The merits of the accusation will be evaluated based upon evidence submitted by the victim and a review or investigation of the incident(s). Findings of discrimination in the form of sexual harassment will result in appropriate disciplinary action.

SAMPLE

## SEXUAL HARASSMENT POLICY FOR STUDENTS HANDBOOK

Sexual harassment in school is UNWANTED sexual attention from teachers, other adults, students or anyone else the victim may deal with in school, at school-related activities or at work (coop job or any other type of job after school hours). The range of behavior includes: leering, pinching, grabbing, suggestive verbal comments, and pressure for sexual activity. Attempted rape and rape are the most physically violent forms of sexual harassment. Sexual harassment may carry the message that if the victim does not comply with the harasser's demands, there may be retaliation. Incidents of sexual harassment may occur only once; sometimes they are repeated; often the situation gets worse if it is not stopped.

Because this is such a serious matter, sexual harassment in any form is forbidden in this school. It can cause serious physical or psychological damage to students or staff, affecting grades, attendance, performance and pride in one's work.

The following behavior are not allowed:

- Staring or leering with sexual overtones.
- Spreading sexual gossip.
- Unwanted sexual comments or sexual jokes told to or in the presence of victim.
- Pressure for sexual activity.
- Any unwanted physical contact of a sexual nature.

Victims of sexual harassment should report the problem to an adult (teacher, guidance counselor, administrator) in the school as soon as possible. The adult will then work with the student to see that appropriate action is taken.

Depending on the severity of the offense, the range of discipline for sexual harassment includes:

- Participation in (a) session(s) on the problem of sexual harassment in our culture and in our school.
- Detention.
- Research or other academic work on the topic of sexual harassment.
- Apology to the victim.
- Further counseling.
- Suspension (number of days similar to other serious offenses).

Students experiencing sexual harassment on their coop or other off-campus jobs should report this immediately to the coop office or guidance department so that the school can take appropriate action.

Sexual harassment is now considered to be a form of sex discrimination and it is illegal in schools and in the workplace under existing state and federal laws.

Student Handbook
Minuteman Tech
758 Marrett Road
Lexington, MA 02173

## MODEL SEXUAL HARASSMENT IN EMPLOYMENT POLICY

Any such policy must of course be tailored to the particular facts of an employer and must take into account any peculiarities of state law. A policy used by a California employer is as follows:

REAFFIRMATION OF THE EQUAL EMPLOYMENT POLICY CONCERNING SEX DISCRIMINATION

It is the policy of the Company that there be no discrimination against any employee or applicant on the basis of sex. In keeping with that policy, the Company will not tolerate sexual harassment by any of its employees.

Sexual harassment is a violation of the Company's Rules of Conduct. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to the conduct is made either an explicit or implicit condition of employment;
- Submission to or rejection of the conduct is used as the basis for an employment decision affecting the harassed employee; or
- The harassment substantially interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

An employee or applicant who feels he or she has been discriminated against due to his or her sex should report such incidents to his or her supervisor, Personnel, or any member of management, without fear of reprisal. Confidentiality will be maintained.

In determining whether alleged conduct constitutes sexual harassment, the totality of the circumstances, the nature of the harassment, and the context in which the alleged incidents occurred will be investigated. The Personnel Department has the responsibility of investigating and resolving complaints of sexual harassment.

The Company considers sexual harassment to be a major offense which can result in the suspension or discharge of the offender.

Schlei, Barbara & Grossman, Paul,
Employment Discrimination Law,
American Bar Association, Chicago,
Ill., 1983

## MODEL DISTRICT SEXUAL HARASSMENT COMPLAINT PROCEDURE

### STEP 1

The first step in a complaint procedure is oral presentation to the victim's immediate supervisor. If the immediate supervisor is the person doing the harassment, the first step would be an oral presentation to the next person in line of authority. The aggrieved person shall orally present the complaint to her/his immediate supervisor or the next person in line of authority within a reasonable period of time following the occurrence of the event(s) on which the complaint is based. The victim shall orally define the nature of the complaint and the remedy sought. The supervisor, or the next person in line of authority, shall give a verbal answer as well as a written response to the complaint within seven (7) calendar days of the presentation of the complaint. The supervisor, or the next person in line of authority, shall notify the Affirmative Action Office in writing that such an oral complaint has been made.

### STEP 2

If the complaint is not settled in Step 1, the victim may present it in writing to the next person in lince of authority within twenty-one (21) calendar days following the occurrence of the event(s) on which the complaint is based. The written complaint shall be detailed and shall include a statement containing:

1. A description of the events in question and the date(s) of occurrence;
2. The name(s) of the individual(s) involved;
3. A specific statement that the sexual harassment policy has been violated;
4. The desired remedy.

The victim shall sign and date the written complaint. The person in line of authority who has received the written complaint shall reply in writing to the complainant within seven (7) days of the date of presentation of the written complaint. The Affirmative Action Office is to receive copies of both the written complaint and the written response to the complainant.

### STEP 3

If the complaint is not settled in Step 2, the victim may sign, date and resubmit the written complaint and the written response to that complaint with a statement regarding why (s)he does not find the answer acceptable to the Affirmative Action Office within seven (7) calendar days after the date of the written response. The Affirmative Action Office shall investigate the

the complaint, and if deemed appropriate, convene a meeting with the victim. The Affirmative Action Office shall provide a confidential recommendation on the matter to the Superintendent of Schools within fourteen (14) calendar days after receipt of the Step 3 complaint or within seven (7) calendar days after a meeting, whichever is later. The Superintendent will thereafter answer the complaint setting forth his/her decision in writing within seven (7) calendar days after receipt of the Affirmative Action Office's recommendation.

STEP 4

A person dissatisfied with the Superintendent's decision may pursue external procedures available through the Tacoma Human Rights Department, Washington State Human Rights Commission or Equal Employment Opportunity Commission.

In using the District's complaint procedure, the following should be kept in mind:

1. The Affirmative Action Office is available to everyone, including an alleged harasser, for advice at any time after a victim and the wupervisor attempt to resolve the complaint;

2. Persons who process a complaint shall be free from restraint, interference, coercion, discrimination and reprisal in seeking resolution of their complaint. Furthermore, persons acting as witnesses to a complaint shall be free from restraint, interference, coercion, discrimination and reprisal;

3. Any time limits stipulated in the complaint procedure may be extended for stated periods of time by mutual agreement in writing between the victim and the appropriate District representative at the step being extended;

4. If a victim fails to comply with any time limitation in the complaint procedure, it shall constitute withdrawal of the complaint. This withdrawal applies only to the District complaint and does not preclude the person's right to pursue the complaint through the procedures of other agencies;

5. If a District representative fails to comply with any time limitation in the complaint procedure, the victim may immediately proceed to the next step of the complaint procedure;

6. Whenever possible, problem-soliving meetings at Steps 1, 2, and 3 shall be scheduled during normal District working hours;

7. Persons who file a complaint based on false allegations are subject to appropriate disciplinary action;

8. If a person initiates a complaint through an external agency (e.g., Tacoma Human Rights Office, Washington State Human Rights Commission, Equal Employment Opportunity Commission), the District processing of the complaint will be discontinued to allow for the external investigation.

Policies and Bylaws
Tacoma School District No. 10

## CONDUCTING AN INTERNAL INVESTIGATION

### THE SUPERVISOR/ADMINISTRATOR

1. Know the school's policy on sexual harassment and recommended procedures for handling complaints of sexual harassment.

2. Know the EEOC and state regulations which pertain to sexual harassment. Consult with the Title IX Coordinator or the Affirmative Action Officer.

3. Listen attentively as the victim answers the following questions:

   - What happened?
   - How did it affect your work?
   - What were your feelings about it?
   - What did you do?
   - What is the background of the incident?
   - What documentation do your have?
   - Did anyone else see or hear the incident?
   - Did you talk with anyone else about it?
   - Do you know if this person has harassed anyone else? If so, who?
   - What would you like me to do about it?

4. Document discussions with the victim.

5. Once an investigation is begun, labor issues arise. You will want to discuss the accusations with the alleged harasser and document the discussion. Remember that an employee represented by a labor organization who is called to an investigatory interview about an incident which might lead to disciplinary action is entitled to representation during the interview.

6. Talk with others who might have witnessed the incident. Document these discussions and remember that non-represented employees may also be entitled to such representation. Applicable labor laws should be examined before conducting any investigatory interview.

7. Evaluate the accusation based upon information you gain from talking with the victim and the alleged harasser, your knowledge of the individuals involved, your observations about the attitudes and behaviors exhibited in the workplace.

8. Working with the school's policy and procedures for handling sexual harassment complaints, discuss the assessment of the situation with the individuals involved. Develop a timeline to aid in processing the complaint quickly.

9. Discuss the investigation result with the appropriate administrator and decide on recommendations for discipline should the allegation have merit.

10. Once the determination has been reached, it should be communicated in writing to both parties and to the grievance officer, if any. A summary of the basis for the determination should be provided to either party upon request.

The above procedures will vary depending on existing labor contracts, established grievance procedures and other existing practices in the school.

## IS SEXUAL HARASSMENT A PROBLEM IN YOUR SCHOOL?

This checklist and survey have been developed to assist school districts in assessing the level of effort they have expended to prevent sexual harassment from occurring, and in determining the level of sexual harassment that actually occurs in their district. The checklist and survey have been designed so that they may be used either separately or together. They apply to sexual harassment of both students and staff.

### * CHECKLIST: What Can You Do To Prevent Sexual Harassment In Your School?

To score the checklist, make a check mark next to each action that has been taken in your district, count the number of check marks, and turn to page 11 to see how your district rates.

1. **Develop a specific policy against sexual harassment.**
   - _____ Do you have such a policy?
   - _____ Has the policy been disseminated to staff?
   - _____ Has the policy been disseminated to students?
   - _____ Is there a procedure to inform new employees and students of the policy?

2. **Develop a grievance procedure to handle complaints about sexual harassment. This may or may not be the same as other grievance procedures.**
   - _____ Do you have such a grievance procedure?
   - _____ Has information about this procedure been disseminated to staff?
   - _____ Has information about this procedure been disseminated to students?
   - _____ Is there a similar grievance procedure written into any union contracts?

3. **Develop a code of conduct for all employees, students and vendors.**
   - _____ Is there any reference to sexual harassment in the student discipline code?
   - _____ Does the student handbook contain policy language regarding sexual harassment?
   - _____ Is there any reference to sexual harassment in the employee code of conduct?
   - _____ Does the employee handbook contain policy language regarding sexual harassment?
   - _____ Do union contracts and affirmative action plans for the district contain policy language regarding sexual harassment?
   - _____ Are student placement worksites notified of school sexual harassment policy?

4. **Sensitize students and staff to the issue of sexual harassment to assure their understanding of the definition of sexual harassment, the laws regarding sexual harassment, and methods for dealing with complaints.**
   - _____ Has there been a training program for district administration?
   - _____ Has there been a training program for district teachers, guidance counselors, and other employees including worksite supervisors?
   - _____ Has there been a training program for students?
   - _____ Has material on sexual harassment been included in courses on human relations or job skills?
   - _____ Can pamphlets advising students and staff about the nature of sexual harassment and its legal implications be found around the school?
   - _____ Has a school-wide conference or speakout been organized by students and/or staff to sensitize the school community to the issue of sexual harassment?

5. **Reach out to populations of students who are known to be particularly vulnerable to sexual harassment.**
   - _____ Have support groups been established for students enrolled in vocational or academic classes that are nontraditional for their gender?
   - _____ Are students that drop vocational or academic classes that are nontraditional for their gender routinely surveyed to establish the reason for dropping, and to determine whether sexual harassment played any role in their decision to drop?
   - _____ Are student placement worksites regularly evaluated for evidence of sexual harassment?

✱ **SCORING THE CHECKLIST**

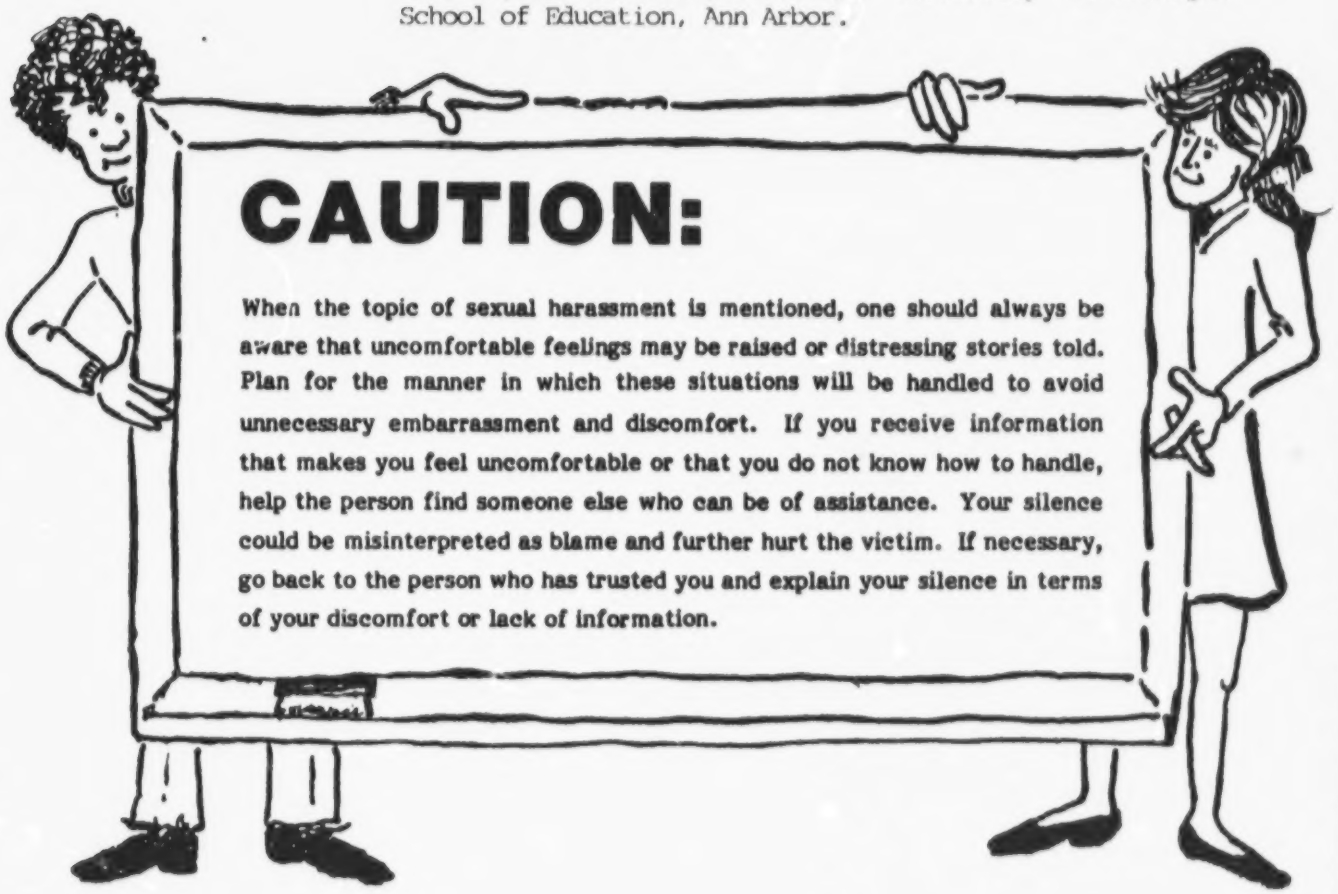
**16-21 points:** Your district has obviously embarked upon a well planned and determined effort to eliminate sexual harassment.

**7-15 points:** While there are efforts being made to prevent sexual harassment in your district, there are many areas where you need to supplement that effort. Consider administering the survey to determine the level of sexual harassment in your district, and use the results of the survey to begin identifying areas to concentrate on.

**0-6 points:** It is necessary for your district to begin examining this issue from the standpoint of liability, and to assess basic levels of awareness. It would be advisable to begin with district policy issues, and to work up to basic awareness of the problem within the district. Set a specific goal for completion of the first phase of the effort. Consider obtaining some support or assistance from an outside agency.

☐ **Marta Larson**

Survey in 'Title IX Line-Center for Sex Equity in Schools,' Vol. IV, No. 1. Fall, 1983. The University of Michigan School of Education, Ann Arbor.


CAUTION:
When the topic of sexual harassment is mentioned, one should always be aware that uncomfortable feelings may be raised or distressing stories told. Plan for the manner in which these situations will be handled to avoid unnecessary embarrassment and discomfort. If you receive information that makes you feel uncomfortable or that you do not know how to handle, help the person find someone else who can be of assistance. Your silence could be misinterpreted as blame and further hurt the victim. If necessary, go back to the person who has trusted you and explain your silence in terms of your discomfort or lack of information.

RESOURCES

## RESOURCES

| | |
|---|---|
| Center for Sex Equity in Schools<br>SEB 1046<br>University of Michigan<br>Ann Arbor, MI 48109-1259<br>(313)763-9910 | A curriculum and guide for use with high school students. Includes examples of sexual harassment in high school, suggestions for establishing support groups as well as curriculum materials and activities. Also has a section on administrative strategies for fighting sexual harassment in the schools. Highly recommended. Copies available free. |
| Curriculum & Instruction Division<br>Massachusetts Dept. of Education | Who's Hurt and Who's Liable: Sexual Harassment in Massachusetts Schools by Nan Stein and Judith Taylor |
| Superintendent of Public Instruction, Office for Equity Education<br>Gene Liddell, Program Manager<br>Old Capitol Building<br>Olympia, WA 98504<br>(206) 753-2560 | Extensive list of books, films, classroom curricula and guides for group discussion for children and adolescents, on sex equity issues. |
| Legal Defense and Education Fund<br>National Organization of Women<br>132 W. 43rd St.<br>New York, NY 10036 | |
| Occupational Education Division<br>Massachusetts Dept. of Education<br>1385 Hancock St.<br>Quincy, MA 02169<br>(607)770-7353, 7356 | Contact: Vocational Sex Equity Coordinator |
| Project SCOPE<br>Massachusetts Dept. of Education<br>Vocational Curriculum Resource Center<br>758 Marrett Road<br>Lexington, MA 02173<br>(607)863-1863 | A Fair Shot/An Equal Chance by Susan Riley. A handbook of activities for support groups for vocational students in non-traditional programs. Includes sections on sexual harassment, assertive behavior and bias and discrimination. Also contains an extensive bibliography. Booklet available free. |
| Task Force on Sexual Harassment<br>c/o Chapter 622 Team<br>Massachusetts Dept. of Education<br>1385 Hancock St.<br>Quincy, MA 02169<br>(617)770-7540, 7552 | Contact to make suggestions for future work on the topic of sexual harassment and for general information. |

## ORGANIZATIONS

### NATIONWIDE

New Responses, Inc.
Room 402
955 S. Columbus St.
Arlington, VA 22204

Women Against Sexual Harassment
Arizona State University
c/o Louise VanBushkirk
568 E. Mesa Vesta Lane
Mesa, Arizona 85203

Women Organized Against Sexual Harassment
300 Eshleman Hall
U.C. - Berkeley, CA 94720

Working Women's Institute
593 Park Avenue
New York, NY 10021

### WASHINGTON STATE

Alternatives to Fear 282-0177
101 Nickerson, Suite 150-A
Seattle, WA 98109

A nonprofit organization which offers self-defense classes for women, senior citizens and parent-child self-protection classes. Specially designed programs are available to organizations. Member of the Washington Coalition of Sexual Assault programs. Publications on rape available.

American Association of University Women 622-0062
(A.A.U.W.)
2104 N. 40th
Seattle, WA 98103

Oldest and largest women's organization in the U.S. Purpose is to advance women's interests. Open to any graduate of a 4-year college.

A.N.E.W. 235-2212
(Apprenticeship and Non-Traditional Employment for Women)
315 Garden Ave. N.
Renton, WA 98055

A.N.E.W. recruits, counsels, trains, and refers women to apprenticeships and non-traditional employment opportunities.

Asian Counseling & Referral Service 447-3606
409 Maynard S., Bus Asian Center
Seattle, WA 98104

A multi-lingual (15 different Asian languages spoken), multi-cultural mental health agency, offering counseling, information and referral, emergency services, and Indo-Chinese refugee job training and Pacific/Asian elderly assistance.

A.S.U.W. Women's Commission 543-1817
Room 201 HUB
University of Washington
M/S FK-30
Seattle, WA 98195

Primary advocacy group for women students on campus; helps women file complaints on sexual harassment and sexual discrimination in the classroom. Sponsors educational forums, workshops and offers a lending library file system.

Black Women's Network
P.O. Box 102
Mercer Island, WA 98040

Promotes the interests and concerns of Black women in a spirit of cooperation and support for and among one another.

Center for the Prevention of 634-1903
Sexual & Domestic Violence
1914 N. 34th, Suite 205
Seattle, WA 98103

The Center is established to provide an educational and training resource to the religious and secular communities in the areas of sexual and domestic violence and their prevention. Offers education programs, materials, resources and counseling referrals.

Committee for Children 524-6020
P.O. Box 15190
Seattle, WA 98115

Provides professional training, curricula development and community education on preventing child sexual abuse.

Concilio for the Spanish Speaking of King County
107 Cherry, Suite 210
Seattle, WA 98104
447-4891

Provides information and referral for services in translations and an employment project for the Hispanic community. Also publishes "La Voz" a news magazine which covers local/state/national issues that have an impact on the Chicano/ Latino community, also provides entertainment information.

Council for the Prevention of Child Abuse & Neglect
1211 E. Lader
Seattle, WA 98122
343-2640

A nonprofit organization dedicated to the prevention of child abuse and neglect. Services include a speakers bureau, professional training, information and referral, parent phone line, parent education, a public awareness campaign, and a resource library.

Feminist Therapy Referral Service
c/o Seattle Central Community College-Women's Programs
1701 Broadway, Room 1101, LSP 100
Seattle, WA 98122
587-3854
323-9388

The new Women's Therapy Referral Service provides referrals to therapists with specialized areas of counseling, experience and credentials. Sliding fee scales.

Feminists Northwest
6201 23rd Ave. NE
Seattle, WA 98115
525-3788

Information and referrals on sex equity in education, both in public schools and in higher education.

King County Rape Relief
305 S. 43rd
Renton, WA 98055
226-RAPE
226-5062 (office)

Has 24-hour crisis line which provides counseling, medical and legal advocacy, and transportation for victims of sexual assault within King County (and outside the City of Seattle). Also has speaker's bureau which provides any community group (elementary and secondary school classrooms, church groups, parent groups, teachers) with information about sexual assault and related topics (personal safety and prevention, how to help a victim, the legal system, etc.) Has nationally acclaimed prevention education booklets available for parents and teens.

King County Women's Programs 344-5240
1207 Smith Tower
Seattle, WA 98104

Government agency; acts as a resource for programs serving women in King County. King County Women's Advisory Board advocates for the role of King County Women's Programs.

Men Against Rape 325-1945
1425 E. Prospect
Seattle, WA 98112

Community-based group of men who work against sexism and to increase awareness on the issue of rape. Public speaking, films, and forums.

National Association for the Advancement of Colored People (N.A.A.C.P.) 324-6600
105 - 14th Ave., Suite C
Seattle, WA 98122

Referral source regarding discrimination. Supports anti-discrimination legislation.

National Organization for Women (N.O.W.) 632-8547
701 NE Northlake Way
Seattle, WA 98105

Action-oriented group working to improve the status of women. Operates through task forces, legislative work. Membership is $45 per year; scholarships are available.

Network of Executive Women 223-1599
3618 Seattle First Nat'l. Bank Bldg.
Seattle, WA 98154

Committed to personal and professional growth and building a better community. Supports women in promoting career advancement; members are mid- to upper-management. Monthly meetings.

Northwest Women's Law Center 682-9552
119 S. Main, Suite 330
Seattle, WA 98104

A nonprofit organization to provide educational services and public-interest litigation on women's rights issues. Provides legal information and referrals to women with legal problems.

Office for Women's Rights 625-4374
City of Seattle
400 Yesler Bldg., 5th Floor
Seattle, WA 98104

Promotes economic equality for women, lesbians and gays through legislative action; technical assistance to City and community organizations; information and referral for general public; community education on issues affecting women, sexual minorities, and minority women, consultation with women business owners in securing City contracts.

Pacific Resource Development Group 622-8671
Susan L. Webb, President
4026 NE 58th
Seattle, WA 98105

Management and employee training on sexual harassment. The following publications are for sale: Sexual Harassment Resource Manual; Training Package and Guidelines for Supervisors and Managers.

9-5, Seattle Association of 624-2985
Working Women
1118 5th Ave.
Seattle, WA 98101

Membership organization of women office workers whose goal is fair, equal, and dignified employment conditions for women.

Seattle Rape Relief 632-7273 (Crisis Line)
1825 S. Jackson, Ste. 102 325-5531 (business/TTY)
Seattle, WA 98144

24-hour crisis line. Counselors provide crisis intervention, counseling, medical and legal advocacy and transportation (to medical and legal appointments) for victims of sexual assault and significant others within the City of Seattle. Also has outreach program to ethnic minority communities, a speaker's bureau, and a developmentally disabled sexual exploitation training project.

Sexual Assault Center 223-3047 (8-5)
Harborview Medical Center 223-3010 (Social Worker)
325 9th Ave.
Seattle, WA 98104

Provides medical care, crisis and group counseling to victims of sexual assault. Provides services for sexually abused children and their families. Also advocates for victims. Limited staff time is available for teaching and consulting with community and professional groups.

SHARE 784-6468 (evenings)
Sexual Harassment Awareness Resource Exchange
c/o Sandy Fry
2236 NW 58th, #1
Seattle, WA 98107

An informational and support group for women who are or have, in the past, experienced sexual harassment. The gorup meets weekly, provides speakers on issues related to sexual harassment.

University YWCA 632-4747
701 NE Northlake Way
Seattle, WA 98105

An 86-year old service organization providing the following services for women: women's employment service, women's cultural center, community educatiCn and social action program, abortion and birth control referral service, and information and referral service.

Washington Education Association - nearest you

Washington Women Lawyers 682-5151
Seattle-King County Office:
Attn: Lucy Isaki
22nd Floor, Bank of California Center
Seattle, WA 98164

State Office: 624-8844
Attn.: Marsha Pechman
1 Union Square, Ste. 1500
Seattle, WA 98101

Lobbies on legal issues affecting women, encourages the election of women to judgeships and provides emotional and social support to its members.

Washington Women United 1-754-9880
1063 Capitol Way, Rm. 205
P.O. Box 2174
Olympia, WA 98507

Lobbying group for women's rights. Has established a state-wide communications network for women.

Women Against Violence 632-0562
Against Women
c/o Randi Solinsky
214 NE 50th Street
Seattle, WA 98105

Volunteer organization working to stop the use of images of violence against women in the media through public education and consumer action. Slide show available.

Women's Bureau 442-1534
U.S. Department of Labor
909 1st Avenue, Rm. 1029
Seattle, WA 98174

Educational and informational agency to acquaint women with their rights under the law. Gives technical assistance to women on long-range career plans and options. A referral agency. Publications available.

Women's Information Center 545-1090
University of Washington
Imogen Cunningham Hall
M/S AJ-50
Seattle, WA 98195

Information and referral services; publishes a monthly calendar of events and a bi-monthly Northwest Women's Report. Also provides a re-entry program for returning students, various educational programs and support groups.

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NO LAUGHING MATTER: HIGH SCHOOL STUDENTS AND SEXUAL HARASSMENT

(Filmstrip) Produced by Boston Women's Teachers' Collective & Media Works, Inc. for the Massachusetts Department of Education; Spring 1982, 25 minutes. This 25-minute filmstrip is recommended for use with grades 7-12. Tells the stories of three young women who encounter sexual harassment at school and work. Defines sexual harassment. Differentiates between harassment and flirting. Offers practical suggestions for dealing with the problem. Order from: The Bureau of Educational Resources, Massachusetts Educational Television, (617)431-7103 or 727-6395. Purchase - $45

THE POWER PINCH: SEXUAL HARASSMENT IN THE WORKPLACE

(MTI Teleprograms, Inc., 3710 Commercial Ave., Northbrook, IL 60062, (800)323-5343) (available through MVCRC, Lexington, MA (617)863-1863)

A 28-minute film, made in 1981, focuses on examples of sexual harassment in the workplace. Through interviews with victims from a variety of settings (mainly white-collar), and through a staff training workshop, emerge men's and women's feelings on the subject. Dramatic role plays and legal explanations are employed to explore the subject. Appropriate for school personnel and certain high school classes.

PREVENTING SEXUAL HARASSMENT

(part of BNAC's Fair Employment Practice program.

Twenty-four hour preview for full program, $96. Order from BNA Communications Inc., Dept. AFC-022, 9401 Decoverly Hall Rd., Rockville, Maryland 20850, (301)948-0540.

SEXUAL HARASSMENT IN THE SCHOOLS

Gamma Vision, Inc. and the Northwest Women's Law Center, 119 South Main, Suite 330, Seattle, WA 98104 (206)682-9552. (Available Spring, 1985)

A 15-minute slide/tape show on sexual harassment in secondary and vocational schools. Covers Title VII and Title IX law. Includes 3 case studies, informal and formal methods of resolution.

SLIDE/TAPE PRESENTATION

(Produced by Media Works, Inc., and the Boston Women's Teacher Group, for the Massachusetts Department of Education, Spring 1982, 20 minutes)

A slide/tape show on sexual harassment.

THE WORKPLACE HUSTLE

(Clark Communications, 943 Howard St., San Francisco, CA 94103, (415)777-1668) Available through The Network, Inc., Andover, MA (617)470-1080)

Narrated by Ed Asner. This popular 20-minute film focuses on examples of sexual harassment in the white collar professional sector, by means of interviews and role plays. It is appropriate for school personnel and certain high school audiences.

# APPENDICES

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APPENDIX A

## EEOC GUIDELINES ON SEXUAL HARASSMENT

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Part 1604**

**Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final Amendment to Guidelines on Discrimination Because of Sex.

**SUMMARY:** On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.11, 45 FR 25024. This amendment will re-affirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted

**EFFECTIVE DATE:** November 10, 1980.

**FOR FURTHER INFORMATION CONTACT:** Karen Danart, Acting Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-7060.

**SUPPLEMENTARY INFORMATION:** During the 60-day public comment period which ended on June 10, 1980, the Commission received over 100 letters regarding the Guidelines on sexual harassment. These comments came from all sectors of the public, including employers, private individuals, women's groups, and local, state, and federal government agencies.

The greatest number of comments, including many from employers, were those commending the Commission for publishing guidelines on the issue of sexual harassment, as well as for the content of the guidelines.

The second highest number of comments specifically referred to § 1604.11(c) which defines employer liability with respect to acts of supervisors and agents. Many commentors, especially employers, expressed the view that the liability of employers under this section is too broad and unsupported by case law. However, the strict liability imposed in § 1604.11(c) is in keeping with the general standard of employer liability with respect to agents and supervisory employees. Similarly, the Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other mitigating factor. *Anderson* v. *Methodist Evangelical Hospital, Inc.*, ——— F.Supp. ———, 3 EPD ¶8282 (D.C. Ky. 1971), *aff'd* 484 F.2d 723, 4 EPD ¶7901 (6th Cir. 1972); Commission Decision No. 71-969, CCH EEOC Decisions (1973) ¶6193; Commission Decision No. 71-1442, CCH EEOC Decisions (1973) ¶6218. Furthermore, a recent 9th Circuit case on sexual harassment imposed strict liability on the employer where a supervisor harassed an employee without the knowledge of the employer. *Miller* v. *Bank of America*, 600 F.2d 211, 20 EPD ¶30,066 (9th Cir. 1979). In keeping with this standard, the Commission, after full consideration of the comments and the accompanying concerns, will let § 1604.11(c) stand as it is now worded.

A number of people asked the Commission to clarify the use of the term "agent" in § 1604.11(c). "Agent" is used in the same way here as it is used in § 701(b) of Title VII where "agent" is included in the definition of "employer."

A large number of comments referred to § 1604.11(a) in which the Commission defines sexual harassment. These comments generally suggested that the section is too vague and needs more clarification. More specifically, the comments referred to subsection (3) of § 1604.11(a) as presenting the most troublesome definition of what constitutes sexual harassment. The Commission has considered these comments and has decided that subsection (3) is a necessary part of the definition of sexual harassment. The courts have found sexual harassment both in cases where there is concrete economic detriment to the plaintiff, *Heelan* v. *Johns-Manville Corp.*, 451 F.Supp. 1382, 16 FPD ¶8330 (D. Colo. 1978), *Barnes* v. *Costle*, 561 F.2d 983, 14 EPD ¶7755 (D.C. Cir. 1977), *Garber* v. *Saxon Business Products*, 552 F.2d 1032, 14 EPD ¶7587 (4th Cir. 1977), and where unlawful conduct results in creating an unproductive or an offensive working atmosphere. *Kyriazi* v. *Western Electric Co.*, 461 F.Supp. 894, 18 EPD ¶8700 (D.N.J. 1978). For analogous cases with respect to racial harassment see *Rogers* v. *EEOC*, 454 F.2d 234, 4 EPD ¶7597 (5th Cir. 1971); *EEOC* v. *Murphy Motor Freight Lines, Inc.*, 488 F.Supp. 381, 22 EPD ¶30,888 (D.C. Mn. 1980).

The word "substantially" in § 1604.11(a)(3) has been changed to "unreasonably." Many commentors raised questions as to the meaning of the word "substantially." The word "unreasonably" more accurately states the intent of the Commission and was therefore substituted to clarify that intent.

It should be emphasized that the appropriate course for further clarification and guidance on the meaning of § 604.11(a)(3) is through future Commission decisions which will deal with specific fact situations. Since sexual harassment allegations are reviewed on a case-by-case basis, any further questions will be answered through Commission decisions which will be fact specific.

A fair number of comments were received on § 1604.11(d) which defined employer liability with respect to acts of persons other than supervisors or agents. Again, as in § 1604.11(c), the traditional Title VII concept prevails regarding employer liability with respect to those people other than agents and supervisory employees. Many commentors asked the Commission to clarify the meaning of "others." As a result, § 1604.11(d) has been separated into two subsections. The new § 1604.11(d) refers to sexual harassment among fellow employees and the liability of an employer in such a situation.

The new § 1604.11(e) refers to the possible liability of employers for acts of non-employees towards employees. Such liability will be determined on a case-by-case basis, taking all facts into consideration, including whether the employer knew or should have known of the conduct, the extent of the employer's control and other legal responsibility with respect to such individuals.

A number of people also raised the question of what an "appropriate action" might be under § 1604.11(d). What is considered to be "appropriate" will be seen in the context of specific cases through Commission decisions.

Section 1604.11(e) of the Interim Guidelines, which sets out suggestions for programs to be developed by employers to prevent sexual harassment, now becomes § 1604.11(f). The Commission has received many comments which state that this section is not specific enough. The Commission has decided that the provisions of this section should illustrate several kinds of action which might be appropriate, depending on the employer's circumstances. The emphasis is on preventing sexual harassment, and § 1604.11(f) intends only to offer illustrative suggestions with respect to possible components of a prevention program. Since each workplace requires its own individualized program to prevent sexual harassment, the specific steps to be included in the program should be developed by each employer.

Several commentors raised the question of whether a third party who was denied an employment benefit

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would have a charge cognizable under Title VII where the benefit was received by a person who was granting sexual favors to their mutual supervisor. Even though the Commission does not consider this to be an issue of sexual harassment in the strict sense, the Commission does recognize it as a related issue which would be governed by general Title VII principles. Subsection (g) has been added to recognize this as a Title VII issue.

After carefully considering the numerous comments it received, the EEOC made the above changes to the Interim Guidelines and, at its meeting of September 23, 1980, adopted them as the Final Guidelines on sexual harassment, subject to formal interagency coordination. Formal interagency coordination has been completed, and none of the affected agencies had additional comments. Therefore, these Guidelines become final as adopted at the Commission meeting of September 23, 1980.

Signed at Washington, D.C., this 3rd day of November 1980.

**Eleanor Holmes Norton,**

*Chair, Equal Employment Opportunity Commission.*

Accordingly, 29 CFR Chapter XIV, Part 1604 is amended by adding § 1604.11 to read as follows:

## PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

### § 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))

[FR Doc. 80-34981 Filed 11-7-80; 8:45 am]

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[1] The principles involved here continue to apply to race, color, religion or national origin.



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APPENDIX B

**Project on the Status and Education of WOMEN**

ASSOCIATION of AMERICAN COLLEGES
1818 R Street, NW, Washington, DC 20009 (202)387-1300

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# WRITING A LETTER TO THE SEXUAL HARASSER: ANOTHER WAY OF DEALING WITH THE PROBLEM

**Bernice R. Sandler, Executive Director**

*[This paper is based in large measure upon a paper written by Mary P. Rowe, a labor economist who is special assistant to the president of the Massachusetts Institute of Technology. Her article, entitled, "Dealing With Sexual Harassment," appeared in the May-June 1981 issue of the Harvard Business Review, and dealt with harassment of employees. However, the principles and techniques Rowe developed can be used by others as well. Among other things, her article explains the ways in which a letter written by the victim to the harasser can be of benefit to both, and often brings an end to the harassment. Many of the examples and conceptualizations are from Rowe's article, as well as the idea of the letter itself. Rowe reviewed this paper and provided invaluable assistance to the writer.]*

Sexual harassment has become an issue of increasing concern on the nation's campuses during the last few years, especially as it became clear that both Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 prohibited sexual harassment of employees and students.[1] Some professors have been fired, others censured or "encouraged" to resign.[2] Staff and administration officers have not been immune—at least two presidents left their position because they were charged with sexual harassment. Institutions as well as individuals have been sued—sometimes for several million dollars.[3]

Institutions have been responding by developing policies prohibiting sexual harassment and procedures to deal with complaints. Much has been written about questions of due process, confidentiality, evaluation of evidence, etc.—questions which arise when formal charges are being considered. Little has been written about how to deal with the issue when complaints first come to light whether prior to the filing of a charge or when the person who has been harassed prefers not to file a charge. The latter category includes the vast majority of victims—possibly 99 percent, according to Rowe. This paper examines one method of dealing with student complaints of sexual harassment—writing a specific kind of letter to the harasser.[4]

One of the most striking aspects of sexual harassment is that the victim feels quite powerless in the situation. Students rely on professors not only for grades, but for future recommendations as well as academic and career opportunities. In a very real sense, a female student's life's chances are at stake. If she[5] complains openly, she might face retaliation which could indeed affect her future. Moreover, she is often fearful of being branded a "trouble maker" if she files formal charges, knowing (in the usual case) that she has no conclusive proof. She usually will worry that she won't be believed, or that she may be blamed by her parents and others for what has occurred. Additionally, she usually has tried stoically to handle the incident(s) by ignoring it,[6] by mentioning that she has a "boy friend," or by other ways that generally prove ineffectual. In short, she feels helpless in the face of behaviors which make her uncomfortable or deeply upset.

However, when the victim comes to another member of the academic community for help and advice, she can be encouraged to write the alleged harasser a specific kind of letter especially if a plain request to stop has been ignored. Writing a letter about the harassment helps the victim handle it herself—by taking an active role, she gains a sense of being in charge of what is "happening" to her—she is in control of her own destiny.

The letter itself is best described as polite, low-key and detailed. Several drafts may be necessary because victims are rightly angry and often understandably upset. The letter should consist of three parts:

**Part I** tells the facts of what has happened, **without evaluation,** as seen by the writer. It should be as detailed and as precise as possible, with dates (or approximate dates), places, and a description of the incidents the writer has experienced with that person:

> *"On December 15, 1982 when I met you for a conference about my work, you asked me to come to your house that evening and said it would 'help' my grades."*
>
> *"Several times this semester when I have talked to you after class you put your arm around me and rubbed my back. Once you also tried to fondle my breast."*
>
> *"Last week at the department party you asked me to go to bed with you."*

**Part II** describes how the writer feels about the events described in Part I, such as dismay, misery, distrust or revulsion, and includes the writer's opinions or thoughts about what happened:

> *"I am embarrassed when I see you."*
>
> *"My stomach turns to knots when I come to class."*
>
> *"That is why I dropped your class."*
>
> *"I cannot believe that you are able to grade my work fairly."*
>
> *"It's hard for me to sleep at night; I've lost ten pounds."*
>
> *"This is the worst thing that has ever happened to me."*
>
> *"You have made me think about transferring from the field of my choice."*
>
> *"It has become very difficult for me to concentrate on my work."*

**Part III** consists of what the writer wants to happen next. This part may be very short, since most writers usually just want the behavior to stop:

> *"I want our relationship to be purely professional from now on."*
>
> *"I don't ever want you to touch me again or to make remarks about my sexuality."*

THE PROJECT ON THE STATUS AND EDUCATION OF WOMEN of the Association of American Colleges provides information concerning women in education, and works with institutions, government agencies and other associations and programs affecting women in higher education. The Project is funded by Carnegie Corporation of New York and The Ford Foundation. Publication of these materials does not necessarily constitute endorsement by AAC, Carnegie Corporation of New York or The Ford Foundation, or any of its sponsoring organization. This paper is included in the packet on rape and sexual harassment available for $2.00 from the Project on the Status and Education of Women, Association of American Colleges, 1818 R Street, NW, Washington, DC 20009. Bulk copies are available.

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If the writer believes a remedy is necessary, it would be included in Part III:

*"Please withdraw my last evaluation until we can work out a fair one."*

*"I will need a written answer as to the reference you will provide from now on."*

Rowe suggests that if the writer had contributed to a possible misunderstanding she might acknowledge it:

*"Although we once were happy dating, it is important to me that we now re-establish a professional relationship, and I ask you to do so."*

The letter should be delivered either in person or by registered or certified mail. Rowe suggests that where necessary a plainclothes police officer, security guard or other protector and/or witness could accompany the writer or arrange to be present when the letter is delivered. (The person accompanying or arranging for delivery does not need to know what is being delivered.)

The writer should keep at least one copy of the letter for herself but, in the usual case, not send copies to other people. Should the letter fail to achieve its purpose—a rarity, according to Rowe—the letter can later be used in support of a formal complaint or lawsuit. However, in most instances, the recipient usually says nothing but does change his behavior. Sometimes he may apologize or offer to discuss the matter, or occasionally, deny the allegations. Rowe states that the recipient rarely writes back; the cessation of sexual harassment is the more usual result.

In many instances, the recipient of the letter is often astonished that his behavior is viewed in the way the writer sees it. He may also be fearful of a formal charge, and worry about who else has seen the letter. The letter also seems to be extraordinarily more powerful than a verbal exchange—even harassers who may have ignored verbal requests to stop, respond differently when the same request is put into writing. In any event, and for whatever reason, the letter often works.

### ADVANTAGES OF LETTER-WRITING

In addition to helping the victim regain a sense of being in control of the situation, the use of a letter in this situation has numerous other advantages:

- **At this stage, it is not necessary to address questions such as legality, confidentiality, evidence and due process.** Indeed, when the letter is successful in stopping the harassment, these questions may not need to be addressed at all.
- **It keeps the incident(s) quiet.** The victim's fear of exposure is minimized; she doesn't have to worry about her reputation—as a "trouble maker," as someone who "couldn't handle it," or as someone who "caused it." (The exposure issue is raised by virtually all victims.)
- **It often avoids formal charges and a public confrontation.** By keeping the incident between the victim and the harasser, the institution does not need to be formally involved (although hopefully agents of the institution have been involved **informally** by helping the victim to write the letter). Rowe points out that third party intervention is not as useful in sexual harassment as in other kinds of disputes, and in fact, may often make things worse for the victim.
- **It provides the harasser with a new perspective on his behavior.** Sometimes such people have no idea how their behavior may be affecting others.
- **It may minimize or prevent retaliation against the writer.**

**The chief reason to use the letter, according to Rowe, is "that it is the only method that usually works and at little 'cost.'"** She also explains the following advantages to individual action supported by the institution as contrasted with overt institutional intervention:

The aims of individual action are:

- *To give the offended and offender a chance, usually for the first time, to see things the same way. Since neither person may have any understanding of how the other sees the problem, discussion may help. Entry of a third party at this stage usually further polarizes the views of the opposing persons.*
- *To give those who are wrongly accused the chance to defend themselves.*
- *To give those who are correctly, or to some extent correctly, accused the chance to make amends. (This may not be possible in serious cases.)*
- *To provide some evidence of the offense, since usually there is no substantive evidence at all. This step is vital if management or the courts must later take action.*
- *To give aggressors who do not understand what they were doing a fair warning, if this is appropriate.*
- *To provide the offended employee a chance to get the harassment stopped without provoking public counterattack, experiencing public embarrassment, harming third parties, damaging the company's reputation, or causing the aggressor to lose face. . . . [T]hese points are almost always considered important by the aggrieved person.*
- *To provide offended persons a way to demonstrate that they tried all reasonable means to get the offender to stop. This step may be convincing later to supervisors, spouses, and others who become involved.*
- *To encourage ambivalent complainants, as well as those who have inadvertently given misunderstood signals, to present a consistent and clear message.*
- *To encourage those who exaggerate to be more responsible.*[7]

Most importantly, the letter can be an important tool for actually ending sexual harassment, and in fact, any kind of harassment.

The letter ought not be used as a substitute for effective policies and grievance procedures which are critical in forming a supportive framework within which the victim can help herself. Many feel that having a tough policy enormously supports the effectiveness of the letter method. It has, however, been effectively used in situations where there was no policy or procedures.

The letter must be voluntary; it must not be used when the victim is unable or unwilling to write it. Institutions can encourage victims to do so, but some may be too upset or frightened.

These individuals as well as others will need a sympathetic person to talk with who can also provide them with various options. Several institutions have publicized the names of campus personnel who will talk to persons who believe that they have been sexually harassed. These designated persons—usually deans, certain members of the faculty, counselors and others—might want to consider advising that the victim communicate a very firm "no" to the harasser and/or use a letter as a first stage approach to handling the problem, as well as providing some advice about the form of the letter, where appropriate. Individuals should be advised to keep a log of events and their feelings prior to writing the letter. Taking action, whether keeping a log, talking about the incident, writing a letter, using grievance procedures or filing other formal charges, helps the victims regain a sense of dignity about themselves.

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[1]Title VII prohibits employment discrimination on the basis of race, color, religion, national origin and sex, and covers virtually all educational institutions. Title IX prohibits sex discrimination against students and employees in educational institutions receiving federal assistance. Information about coverage of sexual harassment by these laws, along with other information is contained in a packet of 5 articles published by the Project on the Status and Education of Women. The packet is available for $2.00 from the Project, 1818 R St., NW, Washington, DC 20009.

[2]See *Selected Articles on Sexual Harassment from On Campus With Women*, included in the packet mentioned above.

[3]Ibid.

[4]The method is also appropriate for faculty and staff who have been sexually harassed by colleagues or supervisors and also works for other kinds of interpersonal difficulties with all kinds of harassment.

[5]Because most victims of sexual harassment are female, and most harassers are male, this paper uses the female pronouns for victims and male pronouns for harassers. However, the laws prohibiting sexual harassment protect both sexes equally, and the paper is equally applicable to cases of males being harassed.

[6]Several studies note that ignoring sexual harassment is usually ineffective; in fact, it may inadvertently act to increase the behavior.

[7]Mary Rowe, "Dealing With Sexual Harassment," *Harvard Business Review*, May-June 1981, p. 43 (also p. 2 of Reprint 81339).

APPENDIX C

## LETTER WRITING AS DOCUMENTATION GUIDELINES

An important part of documentation in sexual harassment cases is writing letters to the proper administrative personnel protesting the unwanted sexual attention (sexual harassment). Letter writing helps to establish efforts in trying to resolve the problem of sexual harassment in the workplace by exhausting workplace mechanisms to remedy the problem.

Below are sample letters and guidelines to aid victims and counselors of victims in writing effective letters. The exact content, to whom they are sent, and the kind of letter written depends on the individual situation.

First, inform the harasser in writing (in addition to verbal protests) that this attention is unwanted. One simple letter is needed. Keep a copy of <u>everything</u> you send.

(Date)

Dear (harasser):

I am advising you that your repeated behavior of (briefly explain incident/types of behavior of unwanted sexual attention you received) on (dates/times/places) are unwanted, unsolicited, and I want it stopped.

(Name)
(Job title)

Once a victim advises the harasser to stop this behavior, s/he may be subjected to retaliation. Because of this common pattern, it may be wise for the victim to begin advising management of the problem (such as the harasser's

supervisor, labor relations representative, personnel department administrator, office manager, or any other administrative personnel the victim believes would be advantageous to advise of the problem) verbally and/or in writing at the same time the written protest is sent to the harasser. A victim may enclose a copy of the letter to the harasser along with the letter to administrative management. It is best that the letter be sent to a specific administrator rather than a general job title.

(Date)

Dear (name of administrator/manager):

I am a receipient of sexual harassment in my workplace. I have documented the occurrences of this behavior by (name of harasser, job title). I have sought a solution to the problem in this workplace by informing (harasser) that this behavior is unwanted, unsolicited, and I want it stopped. The sexual harassment (that is, unwanted sexual attention) has not stopped, and now I am turning to you for a solution to this problem.

I also want to advise you that I am protected by (the 1964 Civil Rights Act, if 15 or more employees, or the Washington State Laws Against Discrimination), and if any retaliation should occur, I will seek legal remedies.

Your prompt response to this problem will be in the best interests of all concerned.

Sincerely,

(name)
(job title)
(school name and address)

If co-workers are willing to sign the letter it could establish even more credibility. A general line could be added such as: "The following employees have either observed or been a victim of sexual harassment in this school."

(Date)

Dear (name of administrator/manager):

This is to acknowledge our (meeting/talk/telephone conversation) on (date) regarding (state topic of the conversation, for example: ". . . the unwanted sexual attention/retaliation I have been receiving from . . ."). Your (opinion/suggestion/comment) that (state what was said by person to whom you are writing this letter) is (welcome/encouraging/inaccurate/unsatisfactory).

I am looking forward to speaking to you again in regard to a fair solution to this problem of sexual harassment in this workplace.

Sincerely,

(Name)
(Job title)

Whenever a victim is informed of a meeting (verbally or in writing) they should respond promptly with a short written confirmation.

(Date)

Dear (name of person who informed victim of meeting):

This is to confirm (date/time as the date and time set for a meeting with (state names and job positions) to (look into/resolve) the problem of unwanted (sexual attention/retaliation/sexual harassment) I am receiving from (name of harasser) in this workplace.

Sincerely,

(Name)
(Job title)

A victim should not assume that the problem is resolved just because of a phone call, letter or promise. An explanation of the complaint status should be provided.

Remedies for solving the problem of sexual harassment do not necessarily end in the workplace. It is in the best inerest of the victim to exhaust the workplace mechanisms available (this includes labor union procedures) before a remedy is sought through the legal options appropriate to the situation. The workplace approach helps to establish the victim's credibility and provides the opportunity to compile documentation necessary for legal remedies.

federal register

Friday
May 9, 1980

Part II

# Department of Education

## Establishment of Title 34

Title VI of the Civil Rights Act of 1964

## PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

100.1 Purpose.
100.2 Application of this regulation.
100.3 Discrimination prohibited.
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100.5 Illustrative application.
100.6 Compliance information.
100.7 Conduct of investigations.
100.8 Procedure for effecting compliance.
100.9 Hearings.
100.10 Decisions and notices.
100.11 Judicial review.
100.12 Effect on other regulations; forms and instructions.
100.13 Definitions.
Appendix A—Federal financial assistance to which these regulations apply.
Appendix B—Guidelines for eliminating discrimination and denial of services on the basis of race, color, national origin, sex, and handicap in vocational education programs.

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

### § 100.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education.

(Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d)

### § 100.2 Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 100.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

(Secs. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d–1, 2000d–3)

### § 100.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other

requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(A) Projects under the Public Works Acceleration Act, Public Law 87–658, 42 U.S.C. 2641–2643.

(B) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371–1374.

(C) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(D) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32–34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Indian Health and Cuban Refugee Services.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d–1, 2000d–3)

**§ 100.4 Assurances required.**

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during

which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training project, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d–5)

**§ 100.5 Illustrative application.**

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In federally-affected area assistance (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(d) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) Upon transfers of real or personal surplus property for educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(g) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(h) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 100.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 100.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(i) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1)

### § 100.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1)

### § 100.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his

designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 100.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252, 42 U.S.C. 2000d, 2000d-1)

**§ 100.8 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 100.4.* If an applicant fails or refuses to furnish an assurance required under § 100.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d-5)

**§ 100.9 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 100.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 100.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at

a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 100.10.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.10 Decisions and notices.**

(a) *Decisions by hearing examiners.* After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 100.9(a) the reviewing authority shall make its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary.* If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient

determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 100.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 100.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.11 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

(Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d–2)

**§ 100.12 Effect on other regulations, forms and instructions.**

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (2) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 181.

(b) *Forms and instructions.* The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in § 100.10(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**§ 100.13 Definitions.**

As used in this part—

(a) The term "Department" means the Department of Education.

(b) The term "Secretary" means the Secretary of Education.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under § 100.10(a)–(d).

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the

provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provison of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d–1)

**Appendix A**

**Federal Financial Assistance to Which These Regulations Apply**

*Part 1. Assistance other than for State-Administered Continuing Programs*

1. Loans for acquisition of equipment for academic subjects, and for minor remodeling (20 U.S.C. 445).
2. Construction of facilities for institutions of higher education (20 U.S.C. 701–758).
3. School Construction in federally-affected and in major disaster areas (20 U.S.C. 631–647).
4. Construction of educational broadcast facilities (47 U.S.C. 390–399).
5. Loan service of captioned films and educational media; research on, and production and distribution of, educational media for the handicapped, and training of persons in the use of such media for the handicapped (20 U.S.C. 1452).
6. Demonstration residential vocational education schools (20 U.S.C. 1321).
7. Research and related activities in education of handicapped children (20 U.S.C. 1441).
8. Educational research, dissemination and demonstration projects; research training; and construction under the Cooperation Research Act (20 U.S.C. 331–332(b)).
9. Research in teaching modern foreign languages (20 U.S.C. 512).
10. Training projects for manpower development and training (42 U.S.C. 2601, 2602, 2610a–2610c).
11. Research and training projects in Vocational Education (20 U.S.C. 1281(a), 1282–1284).
12. Allowances to institutions training NDEA graduate fellows (20 U.S.C. 461–465).
13. Grants for training in librarianship (20 U.S.C. 1031–1033).
14. Grants for training personnel for the education of handicapped children (20 U.S.C. 1431).
15. Allowances for institutions training teachers and related educational personnel in elementary and secondary education, or post-secondary vocational education (20 U.S.C. 1111–1118).
16. Recruitment, enrollment, training and assignment of Teacher Corps personnel (20 U.S.C. 1101–1107a).
17. Operation and maintenance of schools in Federally-affected and in major disaster areas (20 U.S.C. 236–241; 241–1; 242–244).
18. Grants or contracts for the operation of training institutes for elementary or secondary school personnel to deal with special educational problems occasioned by desegregation (42 U.S.C. 2000c–3).
19. Grants for in-service training of teachers and other schools personnel and employment of specialists in desegregation problems (42 U.S.C. 2000c–4).
20. Higher education students loan program (Title II, National Defense Education Act, 20 U.S.C. 421–429).
21. Educational Opportunity grants and assistance for State and private programs of low-interest insured loans and State loans to students in institutions of higher education (Title IV, Higher Education Act of 1965, 20 U.S.C. 1061–1087).
22. Grants and contracts for the conduct of Talent Search, Upward Bound, and Special Services Programs (20 U.S.C. 1068).
23. Land-grant college aid (7 U.S.C. 301–308; 321–328; 328–331).
24. Language and area centers (Title VI, National Defense Education Act, 20 U.S.C. 511).
25. American Printing House for the Blind (20 U.S.C. 101–105).
26. Future Farmers of America (36 U.S.C. 271–391) and similar programs.
27. Science clubs (P.L. 85–875, 20 U.S.C. 2, note).
28. Howard University (20 U.S.C. 121–129).
29. Gallaudet College (31 D.C. Code, Ch. 10).
30. Establishment and operation of a model secondary school for the deaf by Gallaudet College (31 D.C. Code 1051–1053; 80 Stat. 1027–1028).
31. Faculty development programs, workshops and institutes (20 U.S.C. 1131–1132).
32. National Technical Institute for the Deaf (20 U.S.C. 681–685).
33. Institutes and other programs for training educational personnel (Parts D, E, & F, Title V, Higher Education Act of 1965) (20 U.S.C. 1119–1119c–4).
34. Grants and contracts for research and demonstration projects in librarianship (20 U.S.C. 1034).
35. Acquisition of college library resources (20 U.S.C. 1021–1028).
36. Grants for strengthening developing institutions of higher education (20 U.S.C. 1051–1054); National Fellowships for teaching at developing institutions (20 U.S.C. 1055), and grants to retired professors to teach at developing institutions (20 U.S.C. 1056).
37. College Work-Study Program (42 U.S.C. 2751–2757).
38. Financial assistance for acquisition of higher education equipment, and minor remodeling (20 U.S.C. 1121–1129).



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39. Grants for special experimental demonstration projects and teacher training in adult education (20 U.S.C. 1208).

40. Grant programs for advanced and undergraduate international studies (20 U.S.C. 1171–1176; 22 U.S.C. 2452(b)).

41. Experimental projects for developing State leadership or establishment of special services (20 U.S.C. 865).

42. Grants to and arrangements with State educational and other agencies to meet special educational needs of migratory children of migratory agricultural workers (20 U.S.C. 241e(c)).

43. Grants by the Secretary to local educational agencies for supplementary educational centers and services; guidance, counseling, and testing (20 U.S.C. 841–844; 844b).

44. Resource centers for improvement of education of handicapped children (20 U.S.C. 1421) and centers and services for deaf-blind children (20 U.S.C. 1422).

45. Recruitment of personnel and dissemination of information on education of handicapped (20 U.S.C. 1433).

46. Grants for research and demonstrations relating to physical education or recreation for handicapped children (20 U.S.C. 1442) and training of physical educators and recreation personnel (20 U.S.C. 1434).

47. Dropout prevention projects (20 U.S.C. 887).

48. Bilingual education programs (20 U.S.C. 880b–880b–6).

49. Grants to agencies and organizations for Cuban refugees (22 U.S.C. 2601(b)(4)).

50. Grants and contracts for special programs for children with specific learning disabilities including research and related activities, training and operating model centers (20 U.S.C. 1461).

51. Curriculum development in vocational and technical education (20 U.S.C. 1391).

52. Establishment, including construction, and operation of a National Center on Educational Media and Materials for the Handicapped (20 U.S.C. 1453).

53. Grants and contracts for the development and operation of experimental preschool and early education programs for handicapped (20 U.S.C. 1423).

54. Grants to public or private non-profit agencies to carry on the Follow Through Program in kindergarten and elementary schools (42 U.S.C. 2809 (a)(2)).

55. Grants for programs of cooperative education and grants and contracts for training and research in cooperative education (20 U.S.C. 1087a–1087c).

56. Grants and contracts to encourage the sharing of college facilities and resources (network for knowledge) (20 U.S.C. 1133–1133b).

57. Grants, contracts, and fellowships to improve programs preparing persons for public service and to attract students to public service (20 U.S.C. 1134–1134b).

58. Grants for the improvement of graduate programs (20 U.S.C. 1135–1135c).

59. Contracts for expanding and improving law school clinical experience programs (20 U.S.C. 1136–1136b).

60. Exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

61. Grants to reduce borrowing cost for construction of residential schools and dormitories (20 U.S.C. 1323).

62. Surplus real and related personal property disposal for educational purposes (40 U.S.C. 484(k)).

*Part 2—Continuing Assistance to State Administered Programs.*

1. Grants to States for public library service and construction, interlibrary cooperation and specialized State library services for certain State institutions and the physicallly handicapped (20 U.S.C. 351–355).

2. Grants to States for strengthening instruction in academic subjects (20 U.S.C. 411–444).

3. Grants to States for vocational education (20 U.S.C. 1241–1264).

4. Arrangements with State education agencies for training under the Manpower Development and Training Act (42 U.S.C. 2601–2602, 2610a).

5. Grants to States to assist in the elementary and secondary education of children of low-income families (20 U.S.C. 241a–242m).

6. Grants to States to provide for school library resources, textbooks and other instructional materials for pupils and teachers in elementary and secondary schools (20 U.S.C. 821–827).

7. Grants to States to strengthen State departments of education (20 U.S.C. 861–870).

8. Grants to States for community service programs (20 U.S.C. 1001–1011).

9. Grants to States for adult basic education and related research, teacher training and special projects (20 U.S.C. 1201–1211).

10. Grants to States educational agencies for supplementary educational centers and services, and guidance, counseling and testing (20 U.S.C. 841–847).

11. Grants to States for research and training in vocational education (20 U.S.C. 1281(b)).

12. Grants to States for exemplary programs and projects in vocational education (20 U.S.C. 1301–1305).

13. Grants to States for residential vocational education schools (20 U.S.C. 1321).

14. Grants to States for consumer and homemaking education (20 U.S.C. 1341).

15. Grants to States for cooperative vocational educational program (20 U.S.C. 1351–1355).

16. Grants to States for vocational work-study programs (20 U.S.C. 1371–1374).

17. Grants to States to attract and qualify teachers to meet critical teaching shortages (20 U.S.C. 1108–1110c).

18. Grants to States for education of handicapped children (20 U.S.C. 1411–1414).

19. Grants for administration of State plans and for comprehensive planning to determine construction needs of institutions of higher education (20 U.S.C. 715(b)).

## Appendix B—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.

### I. Scope and Coverage 1a. application of guidelines 1a. application of guidelines

These Guidelines apply to recipients of any Federal financial assistance from the Department of Education that offer or administer programs of vocational education or training. This includes State agency recipients.

### B. Definition of Recipient

The definition of "recipient" of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (34 CFR 100.13(i), 106.2(h), 104.3(f).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such terms does not include any ultimate beneficiary [e.g., students] under any such program. (34 CFR 100.13(i)).

For the purposes of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended, directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof. (34 CFR 106.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (34 CFR 104.3(f)).

### C. Examples of Recipients Covered by These Guidelines

The following education agencies, when they provide vocational education, are examples of recipients covered by these Guidelines:

1. The board of education of a public school district and its administrative agency.

2. The administrative board of a specialized vocational high school serving students from more than one school district.

3. The administrative board of a technical or vocational school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school (including persons seeking a

certificate or an associate degree through a vocational program offered by the school) and who are available for study in preparation for entering the labor market.

4. The administrative board of a postsecondary institution, such as a technical institute, skill center, junior college, community college, or four year college that has a department or division that provides vocational education to students seeking immediate employment, a certificate or an associate degree.

5. The administrative board of a proprietary (private) vocational education school.

6. A State agency recipient itself operating a vocational education facility.

**D. Examples of Schools to Which These Guidelines Apply**

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.

2. A vocational education facility operated by a State agency.

3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

4. A comprehensive high school, offering the activities described above, that recieves students on a contract basis from other school districts for the purpose of providing vocational education.

5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students form one or more school districts for the purpose of providing vocational education.

6. A technical or vocational school that primarily provides vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree or certificate through a course of vocational instruction offered by the school.

7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment, an associate degree or a certificate through a course of vocational instruction offered by the school.

8. A proprietary school, licensed by the State that offers vocational education.

Note.—Subsequent sections of these Guidelines may use the term *secondary vocational education center* in referring to the institutions described in paragraphs 3, 4 and 5 above or the term *postsecondary vocational education center* in referring to institutions described in paragraphs 6 and 7 above or the term *vocational education center* in referring to any or all institutions described above.

**II. Responsibilities Assigned Only to State Agency Recipients**

**A. Responsibilities of All State Agency Recipients**

State agency recipients, in addition to complying with all other provisions of the Guidelines relevant to them, may not require, approve of, or engage in any discrimination or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal or State funds to vocational education programs in the State;

2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;

3. Approval of action by local entities providing vocational education. (For example, a State agency must ensure compliance with Section IV of these Guidelines if and when it reviews a vocational education agency decision to create or change a geographic service area.);

4. Conducting its own programs. (For example, in employing its staff it may not discriminate on the basis of sex or handicap.)

**B. State Agencies Performing Oversight Responsibilities**

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.) This compliance program must include:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities;

2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;

3. Providing technical assistance upon request to subrecipients. This will include assisting subrecipients identify unlawful discrimination and instructing them in remedies for and prevention of such discrimination;

4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2. immediately above, to the Office for Civil Rights.

State agencies are not required to terminate or defer assistance to any subrecipient. Nor are they required to conduct hearings. The responsibilities of the Office for Civil Rights to collect and analyze data, to conduct compliance reviews, to investigate complaints and to provide technical assistance are not diminished or attenuated by the requirements of Section II of the Guidelines.

**C. Statement of Procedures and Practices**

Within one year from the publication of these Guidelines in final form, each State agency recipient performing oversight responsibilities must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs A and B immediately above. The Department will review each submission and will promptly either approve it, or return it to State officials for revision.

**III. Distribution of Federal Financial Assistance and Other Funds for Vocational Education**

**A. Agency Responsibilities**

Recipients that administer grants for vocational education must distribute Federal, State, or local vocational education funds so that no student or group of students is unlawfully denied an equal opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap.

**B. Distribution of Funds**

Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap (or an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability) if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups.

**C. Example of a Pattern Suggesting Unlawful Discrimination**

In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory.

**D. Distribution Through Competitive Grants or Contracts**

Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap of any or all of a recipient's students, except to compensate for past discrimination.

**E. Application Processes for Competitive or Discretionary Grants**

State agencies must disseminate information needed to satisfy the

requirements of any application process for competitive or discretionary grants so that all recipients, including those having a high percentage of minority or handicapped students, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one recipient or class of recipients.

**F. Alteration of Fund Distribution to Provide Equal Opportunity**

If the Office for Civil Rights finds that a recipient's system for distributing vocational education funds unlawfully discriminates on the basis of race, color, national origin, sex, or handicap, it will require the recipient to adopt an alternative nondiscriminatory method of distribution. The Office for Civil Rights may also require the recipient to compensate for the effects of its past unlawful discrimination in the distribution of funds.

**IV. Access and Admission of Students To Vocational Education Programs**

**A. Recipient Responsibilities**

Criteria controlling student eligibility for admission to vocational education schools, facilities and programs may not unlawfully discriminate on the basis of race, color, national origin, sex, or handicap. A recipient may not develop, impose, maintain, approve, or implement such discriminatory admissions criteria.

**B. Site Selection for Vocational Schools**

State and local recipients may not select or approve a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, or national origin. Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

**C. Eligibility for Admission to Vocational Education Centers Based on Residence**

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area or attendance zone, (hereinafter "service area"), that unlawfully exclude students on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of the following circumstances indicates that the boundaries of a given service area are unlawfully constituted:

1. A school system or service area contiguous to the given service area, contains minority or nonminority students in substantially greater proportion than the given service area;

2. A substantial number of minority students who reside outside the given vocational education center service area, and who are not eligible for the center reside, nonetheless, as close to the center as a substantial number of non-minority students who are eligible for the center;

3. The over-all vocational education program of the given service area in comparison to the over-all vocational education program of a contiguous school system or service area enrolling a substantially greater proportion of minority students: (a) provides its students with a broader range of curricular offerings, facilities and equipment; or (b) provides its graduates greater opportunity for employment in jobs: (i) for which there is a demonstrated need in the community or region; (ii) that pay higher entry level salaries or wages; or (iii) that are generally acknowledged to offer greater prestige or status.

**D. Additions and Renovations to Existing Vocational Education Facilities**

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

**E. Remedies for Violations of Site Selection and Geographic service area requirements**

If the conditions specified in paragraphs IV, A, B, C, or D, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the discrimination. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination: (1) redrawing of the boundaries of the vocational education center's service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) provision of transportation to students residing in areas unlawfully excluded; (3) provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; (4) reassignment of students; and (5) construction of new facilities or expansion of existing facilities.

**F. Eligibility for Admission to Secondary Vocational Education Centers Based on Numerical Limits Imposed on Sending Schools**

A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

**G. Remedies for Violation of Eligibility Based on Numerical Limits Requirements**

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap.

**H. Eligibility for Admission to Vocational Education Centers, Branches or Annexes Based Upon Student Option**

A vocational education center, branch or annex, open to all students in a service area and predominantly enrolling minority students or students of one race, national origin or sex, will be presumed unlawfully segregated if: 1) it was established by a recipient for members of one race, national origin or sex; or 2) it has since its construction been attended primarily by members of one race, national origin or sex; or 3) most of its program offerings have traditionally been selected predominantly by members of one race, national origin or sex.

**I. Remedies for Facility Segregation Under Student Option Plans**

If the conditions specified in paragraph IV–H are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the segregation. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation or "clustering" of programs or courses; 3) adding programs and courses that traditionally have been identified as intended for members of a particular race, national origin or sex to schools that have traditionally served members of the other sex or traditionally served persons of a different race or national origin; 4) merger of programs into one facility through school closings or new construction; 5) intensive outreach recruitment and counseling; 6) providing free transportation to students whose enrollment would promote desegregation.

[Paragraph J omitted]

**K. Eligibility Based on Evaluations of Each Applicant Under Admissions Criteria**

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).

An introductory, preliminary, or exploratory course may not be established as

a prerequisite for admission to a program unless the course has been and is available without regard to race, color, national origin, sex, and handicap. However, a course that was formerly only available on a discriminatory basis may be made a prerequisite for admission to a program if the recipient can demonstrate that: (a) the course is essential to participation in the program; *and* (b) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

**L. Eligibility of National Origin Minority Persons With Limited English Language Skills**

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction.

Acceptable methods of identification include: (1) identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

**M. Remedial Action in Behalf of Persons With Limited English Language Skills**

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs solely on the basis of their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

**N. Equal Access for Handicapped Students**

Recipients may not deny handicapped students access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary handicapped students; (5) provide related aids or services that assure secondary students an appropriate education.

Academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual handicapped students.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for non-handicapped persons.

**O. Public Notification**

Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of non-discrimination may be made, for example, in local newspapers, recipient publications and/or other media that reach the general public, program beneficiaries, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. A brief summary of program offerings and admission criteria should be included in the announcement; also the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activity.

If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its language and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

**V. Counseling and Prevocational Programs**

**A. Recipient Responsibilities**

Recipients must insure that their counseling materials and activities (including student program selection and career/employment selection), promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

**B. Counseling and Prospects for Success**

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities.

**C. Student Recruitment Activities**

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

**D. Counseling of Students With Limited English-Speaking Ability or Hearing Impairments**

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

**E. Promotional Activities**

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes or limitations based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Materials that are part of promotional efforts may not create or perpetuate stereotypes through text or illustration. To the extent possible they should portray males or females, minorities or handicapped persons in programs and occupations in which these groups traditionally have not been represented. If a recipient's service area contains a community of national origin minority persons with limited English language skills, promotional literature must be distributed to that community in its language.

**VI. Equal Opportunity in the Vocational Education Instructional Setting**

**A. Accommodations For Handicapped Students**

Recipients must place secondary level handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a program only after the recipient satisfies the provisions of the Department's Regulation, 34 CFR Part 104, relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.



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B. Student Financial Assistance

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. If a recipient's service area contains a community of national origin minority persons with limited English language skills, such information must be disseminated to that community in its language.

C. Housing In Residential Postsecondary Vocational Education Centers

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. Comparable Facilities

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by alternating use of the same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. Work Study, Cooperative Vocational Education, Job Placement, and Apprentice Training

A. Responsibilities in Cooperative Vocational Education Programs, Work-Study Programs, and Job Placement Programs

A recipient must insure that: (a) it does not discriminate against its students on the basis of race, color, national origin, sex, or handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay.

If a recipient enters into a written agreement for the referral or assignment of students to an employer, the agreement must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, or handicap.

Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings if the decision resolves the issue of whether the employer has engaged in unlawful discrimination.

B. Apprentice Training Programs

A recipient may not enter into any agreement for the provision or support of apprentice training for students or union members with any labor union or other sponsor that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union or other sponsor providing for apprentice training, the agreement must contain an assurance from the union or other sponsor: (1) that it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprentice training will be offered and conducted for its membership free of such discrimination.

VIII. Employment of Faculty and Staff

A. Employment Generally

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin if such discrimination tends to result in segregation, exclusion or other discrimination against students.

B. Recruitment

Recipients may not limit their recruitment for employees to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. Patterns Of Discrimination

Whenever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not in fact available in the relevant labor market.

D. Salary Policies

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex or handicap.

E. Employment Opportunities For Handicapped Applicants

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. The Effects Of Past Discrimination

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring, and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. Staff Of State Advisory Councils Of Vocational Education

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. Employment at State Operated Vocational Education Centers Through State Civil-Service Authorities

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must insure that recruitment and hiring of staff for the vocational education center is conducted in accordance with the requirements of these Guidelines.

IX. Proprietary Vocational Education Schools

A. Recipient Responsibilities

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. Enforcement authority

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Education. However, authority to enforce Title VI of the Civil Rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Administration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable

requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

## PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE


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Authority: 5 U.S.C. 301

### Subpart A—General Information

#### § 101.1 Scope of rules.

The rules of procedure in this part supplement §§ 100.9 and 100.10 of this subtitle and govern the practice for hearings, decisions, and administrative review conducted by the Department of Education, pursuant to Title VI of the Civil Rights Act of 1964 (sec. 602, 78 Stat. 252) and Part 100 of this subtitle.

#### § 101.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts, of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

#### § 101.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

#### § 101.4 Suspension of rules.

Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

### Subpart B—Appearance and Practice

#### § 101.11 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

#### § 101.12 Authority for representation.

Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.

#### § 101.13 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

### Subpart C—Parties

#### § 101.21 Parties.

(a) The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming him a respondent.

(b) The Assistant Secretary for Civil Rights of the Department of Education, shall be deemed a party to all proceedings.

#### § 101.22 Amici curiae.

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to

be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

**§ 101.23 Complainants not parties.**

A person submitting a complaint pursuant to § 100.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.

## Subpart D—Form, Execution, Service and Filing of Documents

**§ 101.31 Form of documents to be filed.**

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

**§ 101.32 Signature of documents.**

The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

**§ 101.33 Filing and service.**

All notices by a Department official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only on exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 101.107.

**§ 101.34 Service—how made.**

Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be air mailed if the addressee is more than 300 miles distant.

**§ 101.35 Date of service.**

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

**§ 101.36 Certificate of service.**

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

## Subpart E—Time

**§ 101.41 Computation.**

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

**§ 101.42 Extension of time or postponement.**

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision such requests should be addressed to him. Answers to such requests are permitted, if made promptly.

**§ 101.43 Reduction of time to file documents.**

For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 80 of this title.

## Subpart F—Proceedings Prior to Hearing

**§ 101.51 Notice of hearing or opportunity for hearing.**

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to § 100.9 of this title.

**§ 101.52 Answer to notice.**

The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

**§ 101.53 Amendment of notice or answer.**

The Assistant Secretary for Civil Rights may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be

amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

**§ 101.54 Request for hearing.**

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.

**§ 101.55 Consolidation.**

The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

**§ 101.56 Motions.**

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before him. A repetitious motion will not be entertained.

**§ 101.57 Responses to motions and petitions.**

Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

**§ 101.58 Disposition of motions and petitions.**

The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in his discretion expressly so orders.

## Subpart G—Responsibilities and Duties of Presiding Officer

**§ 101.61 Who presides.**

A hearing examiner assigned under 5 U.S.C. 3105 or 3344 (formerly sec. 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

**§ 101.62 Designation of hearing examiner.**

The designation of the hearing examiner as presiding officer shall be in writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record including his recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

**§ 101.63 Authority of presiding officer.**

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions.

(k) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

## Subpart H—Hearing Procedures

**§ 101.71 Statement of position and trial briefs.**

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.

**§ 101.72 Evidentiary purpose.**

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part 100 of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 101.101. Thereafter the proceedings shall go to conclusion in accordance with Subpart J of this part. The presiding officer may allow an appeal from such order in accordance with § 101.86.

**§ 101.73 Testimony.**

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his

discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 101.75 and 101.76, witnesses shall be available at the hearing for cross-examination.

**§ 101.74 Exhibits.**

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

**§ 101.75 Affidavits.**

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

**§ 101.76 Depositions.**

Upon such terms as may be just, for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

**§ 101.77 Admissions as to facts and documents.**

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer or the reviewing authority if no presiding officer has yet been designated may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute and admission by him for any other purpose or be used against him in any other proceeding or action.

**§ 101.78 Evidence.**

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

**§ 101.79 Cross-examination.**

A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination.

**§ 101.80 Unsponsored written material.**

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

**§ 101.81 Objections.**

Objections to evidence shall be timely and briefly state the ground relied upon.

**§ 101.82 Exceptions to rulings of presiding officer unnecessary.**

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

**§ 101.83 Official notice.**

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

**§ 101.84 Public document items.**

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

**§ 101.85 Offer of proof.**

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

**§ 101.86 Appeals from ruling of presiding officer.**

Rulings of the presiding officer may not be appealed to the reviewing authority prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to it for decisions, the reviewing authority may direct the presiding officer to certify any question or the entire record to it for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

## Subpart I—The Record

### § 101.91 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

### § 101.92 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

## Subpart J—Posthearing Procedures, Decisions

### § 101.101 Posthearing briefs: proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

### § 101.102 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including his recommended findings and proposed decision, to the responsible Department official; or if so authorized he shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

### § 101.103 Exceptions to initial or recommended decisions.

Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

### § 101.104 Final decisions.

(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 101.103, such decision shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(b) Where the hearing is conducted by a hearing examiner who makes a recommended decision, or upon the filing of exceptions to a hearing examiner's initial decision, the reviewing authority shall review the recommended or initial decision and shall issue its own decision thereon, which shall become the final decision of the Department, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 101.106.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

### § 101.105 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, he shall make such request in writing. The reviewing authority may grant or deny such requests in its discretion. If granted, it will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Department hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

### § 101.106 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant to § 101.104(a) or within 20 days of the mailing of a final decision referred to in § 101.104(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of his intent to review the decision in whole or in part upon his own motion. If the Secretary grants the requested review, or if he serves notice of intent to review upon his own motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

### § 101.107 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in this subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 101.71 shall be served on amici.

## Subpart K—Judicial Standards of Practice

### § 101.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to restrain his client from improprieties in connection with a proceeding.

### § 101.112 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgement of the reviewing authority by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper that such interested persons or any members of



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the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgement of any officer having a responsibility for a decision in the proceeding, or his decisional staff. It is improper for any person to solicit communications to any such officer, or his decisional staff, other than proper communications by parties or amici curiae.

**§ 101.113 Ex parte communications.**

Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

**§ 101.114 Expeditious treatment.**

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

**§ 101.115 Matters not prohibited.**

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 101.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of Part 100 of this title are not prohibited.

**§ 101.116 Filing of ex parte communications.**

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

## Subpart L—Postermination Proceedings

**§ 101.121 Postermination proceedings.**

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to subparagraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

## Subpart M—Definitions

**§ 101.131 Definitions.**

The definitions contained in § 100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term "reviewing authority" as used herein includes the Secretary of Education, with respect to action by that official under § 101.108.

Transition provisions: (a) The amendments herein shall become effective upon publication in the Federal Register.

(b) These rules shall apply to any proceeding or part thereof to which Part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 45 CFR Part 80 (Title VI regulations of the Department of Health, Education, and Welfare) as that part existed prior to the amendments published in the Federal Register on Oct. 19, 1967 (effective on that date), the rules in this Part 101 shall apply as if those amendments were not in effect.

federal register

Friday
May 9, 1980

Part II

# Department of Education

Establishment of Title 34

## DEPARTMENT OF EDUCATION

### 34 CFR Chs. I–VIII

### Establishment of Title and Chapters

**AGENCY:** Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Department of Education Organization Act (Pub. L. 96–88, enacted Oct. 17, 1979) establishes the Department of Education as a new executive department. The statute transfers to the new department functions from five other departments and the National Science Foundation.

Since the regulations governing the various functions assumed by the Department of Education are found in separate Titles of the Code of Federal Regulations, it would be beneficial to consolidate and codify them in a single Title of the Code.

Therefore, this publication establishes Title 34, describes the chapters to be included within that Title, recodifies certain regulations of the former Department of Health, Education, and Welfare, and lists the other regulations that are transferred to the Department of Education under the Department of Education Organization Act and will ultimately be recodified in Title 34.

**EFFECTIVE DATE:** May 4, 1980.

**ADDRESS:** Department of Education, Washington D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** A. Neal Shedd, Department of Education (Room 2129), Washington, D.C. 20202, Telephone: (202) 245–7091.

**SUPPLEMENTARY INFORMATION:** It has been determined that publication of this rule as a proposal for public comment is unnecessary as it deals only with establishment and arrangement of Title 34, the recodification of certain regulations with no substantive changes, and other technical matters. The regulations recodified in Title 34 apply to the Department of Education as a matter of law under Section 505(a) of the Department of Education organization Act. Functions Transferred to the Department of Education.

The functions transferred to the Department of Education by the Department of Education Organization Act include, generally—

(a) A broad range of education functions previously performed by the Department of Health, Education, and Welfare (HEW), as well as the functions of the Office for Civil Rights relating to the education functions transferred;

(b) All functions relating to the operation of overseas schools for dependents of the Department of Defense, provided that certain statutory requirements are fulfilled;

(c) All functions of the Secretary of labor or the Department of Labor under secton 303(c)(2) of the Comprehensive Employment and Training Act relating to certain migrant education programs;

(d) All functions relating to certain science education programs transferred from the National Science Foundation;

(e) The law enforcement education program and the law enforcement internship program previously administered by the Department of Justice; and

(f) All functions of the Secretary of Housing and Urban Development and of the Department of Housing and Urban Development relating to college housing loans under Title IV of the Housing Act of 1950.

### Regulations To Be Redesignated

Under the Department of Education Organization Act, the following existing regulations (as of April 20, 1980) are transferred by operation of law to the Department of Education. These regulations will ultimately be redesignated and recodified in Title 34 of the Code of Federal Regulations. Until redesignation and recodification is accomplished, however, these regulations will retain their current CFR title and part number designation.

**Title of Regulations**

Chapter I—Office of Education, Department of Health, Education, and Welfare

| 45 CFR Part | |
|---|---|
| 100a | Direct project grant and contract programs. |
| 100b | State-administered programs. |
| 100c | General. |
| 100d | Education Appeals Board. |
| 101 | Grants to land grant colleges and universities. |
| 104 | State vocational education programs. |
| 105 | Commissioner's discretionary programs of vocational education. |
| 111 | Hearings in connection with school construction and financial assistance in federally impacted areas. |
| 112 | School construction assistance in cases of certain disasters. |
| 113 | Assistance for current school expenditures in cases of certain disasters. |
| 114 | Assistance for school construction in areas affected by Federal activities. |
| 115 | Assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educationally agencies cannot provide suitable free public education. |
| 116 | Financial assistance to local educational agencies and state agencies to meet the special educational needs of educationally deprived, handicapped, migrant and neglected and delinquent children—general provisions. |
| 116a | Financial assistance to local educational agencies to meet the special educational needs of educationally deprived and neglected and delinquent children. |
| 116b | State operated programs for handicapped children. |
| 116c | Grants to State agencies for programs to meet the special educational needs of children in institutions for neglected or delinquent children. |
| 116d | Grants to State educational needs of migratory children. |
| 119 | Strengthening State educational agency management. |
| 120 | Administration of education programs and duties of the State educational agency. |

**Title of Regulations—Continued**

Chapter I—Office of Education, Department of Health, Education, and Welfare

| | |
|---|---|
| 121a | Assistance to States for education of handicapped children. |
| 121b | Regional resource centers. |
| 121c | Centers and services for deaf-blind children. |
| 121d | Early education for handicapped children. |
| 121e | Auxiary activities. |
| 121f | Training personnnel for the education of the handicapped. |
| 121g | Recruitment of personnel and dissemination of information. |
| 121h | Research in education of the handicapped. |
| 121i | Instructional media for the handicapped. |
| 121k | Regional education programs for handicapped persons. |
| 121m | Incentive grants. |
| 122a | Indochina Refugee Children Assistance. |
| 123 | Bilingual education. |
| 123a | Bilingual education basic projects. |
| 123b | Bilingual education demonstration projects. |
| 123e | Bilingual education State educational agency projects for coordinating technical assistance. |
| 123d | Bilingual education support services projects. |
| 123e | Bilingual education training projects. |
| 123f | Bilingual education school of education projects. |
| 123g | Bilingual education desegregation support program. |
| 123h | Bilingual education fellowship program. |
| 123i | Bilingual education material development projects program. |
| 126 | Health education assistance loan program. |
| 130 | Library services, public library construction, and interlibrary cooperation. |
| 131 | College library resources program. |
| 132 | Grants for training in librarianship. |
| 132 | Library research and demonstration. |
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689 Migrant and other seasonally employed farmworkers programs (to the extent the regulations apply to functions of the Secretary of Labor or the Department of Labor under section 303(c)(2) of the Comprehensive Employment and Training Act).

## Establishment and Organization of Title 34

All regulations transferred into the Department of Education will be reorganized into a single Title 34 of the Code of Federal Regulations entitled "Education." Subtitle A of Title 34 will include regulations of the Office of the Secretary of Education, such as regulations under the Freedom of Information Act, regulations under the Privacy Act of 1974, and standards of conduct for Department officials. Subtitle B will include regulations governing the functions of the major offices established by the Department of Education Organization Act.

(Department of Education Organization Act, Pub. L. 96-88, Oct. 17, 1979 (20 U.S.C. 3401 *et seq.*))

Dated: April 30, 1980.

**Shirley M. Hufstedler,**

*Secretary of Education.*

1. Accordingly, a new Title 34 of the Code of Federal Regulations entitled "Education" is hereby established with the following subtitles and Chapters.

**Title 34—Education**

Subtitle A—Office of the Secretary, Department of Education (Parts 1–99).
Subtitle B—Regulations of the Offices of the Department of Education.
Chapter I—Office for Civil Rights (Parts 100–199).
Chapter II—Office of Elementary and Secondary Education (Parts 200–299).
Chapter III—Office of Special Education and Rehabilitative Services (Parts 300–399).
Chapter IV—Office of Vocational and Adult Education (Parts 400–499).
Chapter V—Office of Bilingual Education and Minority Languages Affairs (Parts 500–599).
Chapter VI—Office of Postsecondary Education (Parts 600–699).
Chapter VII—Office of Educational Research and Improvement (Parts 700–799).
Chapter VIII—Office of Education for Overseas Dependents (Parts 800–899).

**Regulations Recodified in Title 34**

2. The following parts are added to Title 34, Subtitle A:

**SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION**

Part
4 Service of process.
5 Availability of information to the public pursuant to Public Law 90-23.
5b Privacy Act regulations.
6 Inventions and patents (general).
7 Employee inventions.
8 Inventions resulting from research grants, fellowship awards, and contracts for research.
10 Departmental Fellowship Review Panel.
11 Committee Management.
12 Disposal and utilization of surplus real property for educational purposes.
15 Relocation assistance and real property acquisition policies.
17 Release of adverse information to news media.
30 Claims collection.
35 Tort claims against the Government.
50 U.S. exchange visitor program—request for waiver of the two-year foreign residence requirement.
83 Telecommunications Demonstration Program.
84 Museum Services Program.
87 Student Loan Marketing Association—Issuance and Transfer of Common Stock.
73 Standards of conduct.
74 Administration of grants.
99 Privacy rights of parents and students.

**PART 4—SERVICE OF PROCESS**

Sec.
4.1 Service of process required to be served on or delivered to Secretary.

Authority: 5 U.S.C. 301.

**§ 4.1 Service of process required to be served on or delivered to Secretary.**

Summons, complaints, subpoenas, and other process which are required to be served on or delivered to the Secretary of Education shall be delivered to the General Counsel or the Secretary to the General Counsel, by mail at 400 Maryland Avenue SW., Washington, D.C. 20202 or by personal service at that address. The persons above designated are authorized to accept service of such process.

(5 U.S.C. 301)

**PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUBLIC LAW 90-23**

**Subpart A—Definitions**

Sec.
5.1 Act.
5.2 Department.
5.5 Records.

**Subpart B—What Records Are Available**

5.11 Purpose and scope.
5.12 General policy.
5.13 Records available.
5.14 Published documents.
5.15 Creation of records.
5.16 Deletion of identifying details.
5.17 Records in record centers.
5.18 Destroyed records.
5.19 Records of other departments and agencies.

**Subpart C—Freedom of Information Officer**

5.32 Freedom of information officer.

**Subpart D—Procedures for Requesting Access to Records**

5.51 Procedure.
5.52 Copies of records.
5.53 Denial of requests for records.

**Subpart E—Fees**

5.60 Policy on fees.
5.61 Fee schedules.
5.63 Searching records.
5.64 Copying.
5.65 Certification or authentication.

**Subpart F—Availability of Specific Records**

5.70 Policy.
5.71 Protection of personal privacy and proprietary information.
5.72 Records available.
5.73 Records not available.
5.74 Further disclosure.

**Subpart G—Administrative Review**

5.80 Review of denial of a record.
5.81 Time for initiation of request for review.



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5.82 By whom review is made.
5.83 Contents of request for review.
5.84 Consideration on review.
5.85 Decisions on review.

Appendix

Authority: 81 Stat. 54; 7 U.S.C. 2243, 5 U.S.C. 552.

## Subpart A—Definitions

### § 5.1 Act.

As used in this part, "Act" means section 552 of Title 5, United States Code, as amended by Public Law 90–23, codifying the Act of July 4, 1966, sometimes referred to as the "Public Information Act".

### § 5.2 Department.

As used in this part, "Department" means the Department of Education.

### § 5.5 Records.

As used in this part:

(a) "Record" includes books, brochures, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, slides, motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Department pursuant to Federal law or in connection with the transaction of public business and preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities.

(b) "Record" does not include: Objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulae, designs, drawings, or other items of valuable property; books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.

## Subpart B—What Records Are Available

### § 5.11 Purpose and scope.

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public what records are generally available.

### § 5.12 General policy.

The Department's policy is one of the fullest responsible disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure pursuant to law, records of the Department shall be available for inspection and copying in accordance with this part.

### § 5.13 Records available.

(a) *Publication in the Federal Register.* The following shall be published in the Federal Register:

(1) Descriptions of the Department's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department;

(5) Every amendment, revision, or repeal of the foregoing.

(b) *Agency opinions and orders.* The Department shall, in accordance with this part and applicable regulations, make available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations thereof in matters that are not the result of administrative proceedings such as hearings or formal appeals are not "opinions and orders in the adjudication of cases");

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(3) Administrative staff manuals and instructions to staff that affect any member of the public;

unless such materials are promptly published and copies offered for sale.

The Department shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by this paragraph (b) to be published or made available.

(c) *Availability of records on request.* In addition to the records made available pursuant to paragraphs (a) and (b) of this section, the Department shall, upon request for identifiable records made in accordance with this part, make such records available to any person, unless it is determined that such records must be withheld from disclosure and are exempt under subsection (b) of the Act and Subpart F of this part.

### § 5.14 Published documents.

Published records of the Department, whether or not available for purchase, shall be made available for examination.

### § 5.15 Creation of records.

Records are not required to be created by compiling selected items from the files, and records are not required to be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this part.

### § 5.16 Deletion of identifying details.

Whenever any final opinion, order, or other materials required to be made available pursuant to subsection (a)(2) of the Act relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

> Names of parties and certain other identifying details have been removed [and fictitious names substituted] in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

### § 5.17 Records in record centers.

When a request is made for identifiable records of the Department which have been stored in the National Archives or other record centers of the General Services Administration, but would otherwise be available under this Act, such records shall be requested by the Department for the requester.

### § 5.18 Destroyed records.

Records of specified form or character are destroyed after the lapse of time specified in the Records Disposal Act of 1943 (44 U.S.C. 366–380), the Federal Property Management Regulations (41 CFR Part 101–111), and the Records Control Schedules.

## PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE


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106.60 Pre-employment inquiries.
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106.71 Interim procedures.

Subject Index to Title IX Preamble and Regulation

**Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs.**

**Subpart A—Introduction**

**§ 106.1 Purpose and effective date.**

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 88 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

**§ 106.2 Definitions.**

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Education.

(d) *"Assistant Secretary"* means the Assistant Secretary for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under

which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.3 Remedial and affirmative action and self-evaluation.**

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c) (ii) of this section and of any remedial steps taken pursuant to paragraph (c) (iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

**§ 106.4 Assurance required.**

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.5 Transfers of property.**

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.6 Effect of other requirements.**

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.7 Effect of employment opportunities.**

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.8 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.

The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompty and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.9 Dissemination of policy.**

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to a prise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

## Subpart B—Coverage

**§ 106.11 Application.**

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.12 Educational institutions controlled by religious organizations.**

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.13 Military and merchant marine educational institutions.**

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.14 Membership practices of certain organizations.**

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

**§ 106.15 Admissions.**

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.16 Educational institutions eligible to submit transition plans.**

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the Secretary as described in § 106.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.17 Transition plans.**

(a) *Submission of plans.* An institution to which § 106.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 106.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 106.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§§ 106.18–106.20 [Reserved]**

## Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

**§ 106.21 Admission.**

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 106.16 and 106.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admision, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.22 Preference in admission.**

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.23 Recruitment.**

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 106.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 106.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or

entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 106.24–106.30 [Reserved]

## Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

### § 106.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives of benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

### § 106.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

### § 106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

### § 106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective

standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.35 Access to schools operated by L.E.A.s.**

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.36 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.37 Financial assistance.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 106.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 106.38 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.39 Health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate

Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.40 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.41 Athletics.**

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 106.42 Textbooks and curricular material.**

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.43-106.50 [Reserved]**

## Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

**§ 106.51 Employment.**

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way

which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.52 Employment criteria.**

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.53 Recruitment.**

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.54 Compensation.**

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.55 Job classification and structure.**

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 106.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.56 Fringe benefits.**

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 106.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.57 Marital or parental status.**

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave,



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payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.58 Effect of State or local law or other requirements.**

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.59 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.60 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 106.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§§ 106.62–106.70 [Reserved]**

## Subpart F—Procedures [Interim]

**§ 106.71 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6–100.11 and 34 CFR Part 101.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

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**Appendix A—Guidelines for Eliminating Discrimination and Denial of Services on the basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs**

Note.—For the text of these guidelines, see 34 CFR Part 100, Appendix B
[44 FR 17168, Mar. 21, 1979]

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ARE THERE TIMES WHEN YOU MIGHT BE AN HARASSER?

1. Pay attention to how others respond to what you do and say.

2. Don't assume that your co-workers or employees enjoy comments about their appearance, hearing sexually oriented jokes or comments, being touched, stared at, or propositioned.

3. Think about the impact of what you do and say on another peron's attitudes toward work, job performance and self-esteem.

4. Talk to your spouse, family members, or close friends about experiences they might have had with sexual harassment. As people describe the vulnerability, powerlessness, or anger they experienced as victims, relate those feelings to experiences you have had.

5. If you are a supervisor, do not assume that individuals who work for you will tell you if they are offended -- or harassed -- by what you say or do. Remember that one of your employees may be "smiling on the outside, but cringing on the inside" simply because you are the boss.

6. Remember that sexual harassment is against the law. Recent court decisions have resulted in both organizations and individuals paying large fines.

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